PATTERNS OF POWER · THE REVOLUTION OF 1688

The Revolution of 1688

The Complete Study · 1685 — 1689 — 1701

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with Claude (Anthropic) · 2026

held as tested, not revealed

Held as tested, not revealed.

A case study in the Patterns of Power series.
Primary sources quoted exactly; modern scholarship paraphrased and credited.
Contested figures given as ranges. Nothing reconstructed from memory.

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Preface and Outline

What the study found, how it was built, where it broke its own predictions, and a map of its fourteen parts

The spine

This is the fourth of four settlements laid on the same piece of ground, and the sequence is what gives it its value.

A Norman duke with no source of title inside England seated his followers in the legal positions of named dead Englishmen and established the principle everything afterwards depended on — that in England no man owns land outright but holds it of the crown. Four and a half centuries later a lawful king closed that bracket: Henry VIII abolished the lessor, appointed himself to the office, and took a quarter of the country from living lawful owners by statute — and to prove the operation lawful he had to argue from a text, and to argue from a text in a realm he was persuading he had to publish it. A hundred and ten years after that, men formed by that book tried the king's descendant in Westminster Hall and cut off his head, destroyed the only source of lawful title in England, and could not replace it. Their arrangement lasted nine years.

Thirty-nine years after the scaffold, the same country removed another king, with largely the same families, and it took.

The single fact that organises this study is that **nothing in England was redistributed.** No confiscations, no attainders of estates, no court of claims. Every other settlement in the sequence manufactured its defenders by handing out land, and manufactured one enemy for every defender it made. This one handed out nothing, and had to bind its coalition some other way — which is how a financial technique adopted to borrow money more cheaply came to be doing the constitutional work that no land settlement was available to do.

Everything else follows from three constraints and one accident.

The **first constraint** was that a conquest could not be admitted. William landed with the largest foreign force to reach England since 1066 and his own manifesto denied that it was a conquest — not on moral grounds but on grounds of property. Those who had invited him, the Additional Declaration says, could not join in an attempt of conquest without making void their own lawful titles to their honours, estates and interests. A conquest reopens the crown, and reopening the crown reopens

everything held of it, including the estates of the seven men who signed the invitation in cipher. Six hundred and twenty-two years after a Norman laid that doctrine down, it reached out and told a Dutch army what it was permitted to call itself.

The **second constraint** was that nobody could be tried. The previous study in this sequence found that what England drew from 1649 was not "a king may be tried" but *never that again — do it this other way*, and predicted that 1688 would be arranged so as to avoid trying anybody. It was. The most consequential act of the whole founding was a use of force withheld: a guard posted at Rochester on the night of 23 December 1688 so that the king could get out. A prisoner must be dealt with; a fugitive can be construed.

The **third constraint** was that the crown could not be conceded to be conditional. A forfeiture implies a grantor who may enforce the terms, and a grantor who may enforce the terms is an elective monarchy, which is what the Lords fought a fortnight to refuse. So the emptying had to be attributed to the loser's own act, in a sentence containing no other agent, using a word — *abdicated* — that Nottingham correctly objected was not known to the common law of England. That was its qualification. Every English term dragged consequences the drafters could not accept; a word with no domestic legal history arrived with none, and could be defined on the spot out of Grotius and Bartolus by a barrister on his feet.

The **accident** was the money. To borrow at the scale a continental war required, the crown had to make its own promises enforceable against itself, and after the Stop of the Exchequer in 1672 no lender would accept a king's word. The only available warrant was the institution the Stuarts had spent a century governing without. What resulted was not merely cheap credit but a settlement in paper: a claim registered in course, payable to executors, administrators and assigns, native or foreigner, on money not divertible to any other use whatsoever — transferable, heritable, and priced daily on an exchange. The warrant moved in the money in 1694, a long time before anybody moved it in the theory.

Run the framework's question through the English hierarchy of 1689 — would you be worse off if this arrangement were reversed? — and the answer is thin. No deed. Office that attaches to whoever will confirm you. A contingent by-product gain for the clergy, four hundred of whom found it insufficient and gave up their livings. Dissenters who had been offered more by the man the Revolution removed. What filled the gap was a body of marketable claims charged on the state's own revenues, and the reason those bound is not that a Stuart would certainly have repudiated them but that a market cannot wait and cannot be bought off one holder at a time.

It survived two armed risings, a financial collapse that ruined its own constituency, and a famine that killed perhaps a tenth of one of its three kingdoms. It is, altered, still running.

How it was built

One module at a time, verification before writing, over the arc the Field Manual sets: a landscape and twelve modules, each with a framework function, each returning a refinement rather than merely applying the framework. The author brought the framework, the direction and the judgement of the whole, and set the question each module was to answer before it was researched; Claude did the research and produced the drafts, each presented and confirmed before the next was begun. A seed written by an earlier Claude supplied a starting spine and was wrong in several particulars; where the research contradicted it, the research was followed and the seed was not argued with on the page.

Public-domain primary sources are quoted exactly and at the length the argument needs. The richest are these.

The **Judgment and Decree of the University of Oxford** of 21 July 1683, which condemns as false, seditious and impious — proposition by proposition — very nearly the contents of the settlement of 1689, including the mutual compact between a prince and his subjects, and which orders every tutor in the university to teach that submission is to be clear, absolute and without exception of any state or order of men.

The **free conference between the two Houses** of 4–6 February 1689, printed at length in the eighteenth-century *History and Proceedings of the House of Commons*, in which the legal fiction is manufactured in public with the reasons stated aloud — Nottingham's objection that *abdicated* is not a word known to the common law, Somers's parade of five continental jurists to supply it with one, Maynard's *nemo est haeres viventis*, and Sir Robert Howard telling the peers to their faces that they had all been guilty of high treason if the throne were not vacant.

William's Declaration of Reasons of October 1688 and the **Additional Declaration** of the 24th, both reproduced entire in the Commons Journal; the **Bill of Rights** and the Scottish **Claim of Right**, which describe the same event as an abdication and as a forfeiture five weeks apart; the **Scottish Test Act of 1681**, whose oath the whole political nation had to swear and whose parenthesis exempts *the king's lawful brothers and sons only*; the **Tenures Abolition Act 1660**, which converted rather than abolished; the **hearth-tax repeal of 1689**, calling a searchable house a badge of slavery upon the whole people; the **Land Tax Act 1692** and the **Bank of England Act 1694**, whose long title grants duties on beer, ale and other liquors to

secure recompenses to such persons as shall voluntarily advance; the **Treason Trials Act 1696**, admitting the accused to make his and their full defence by counsel learned in the law; the **Popery Act** of 1700, putting a hundred pounds on a priest; the Irish **Education Act of 1695**, whose preamble states the framework's own doctrine of formation better than the framework does; the **Catechism of 1662**; and Locke's preface calling William *our great restorer*.

Modern copyrighted scholarship is paraphrased and credited, and where it disagrees the disagreement is named rather than settled — on the size of William's fleet and army, on the deaths inside Derry, on whether the English Jacobite failure at Derby reflects an absent fracture or a failure of coordination, on the dating and canonisation of Locke's *Two Treatises*, and on the causes of the Scottish famine.

Where it broke its own predictions

The framework had three founding positions and needed a fourth. Outsider conqueror, lawful apex, armed insider — William is none of them. He is a foreign sovereign prince with a foreign state's army, invited in writing by insiders whose titles descend from the order he is entering. He therefore has the conqueror's capacity and the insider's sequence: robe printed and distributed in England five weeks before the fleet sailed. The invited outsider's vocabulary is fixed by his sponsors' property, and the constraint the Henrician study found operating on a lawful apex here operates on a man with no English title at all, because it operates through the people who asked him in.

The catalogue of settlement fictions needed a seventh. *Abdication*: object an office rather than land, precondition a holder who is alive and claiming, job the transfer of an office without a transferor and without a forfeiture. And it came with a refinement that inverts an expectation the framework carries: the word was chosen for its *emptiness*. Where every term in the domestic legal vocabulary drags a consequence the drafters cannot accept, expect them to import one from outside the system precisely because it arrives with no history.

Extraction needed a third fork. Flow and stock did not cover a funded debt, which is the sale of a claim on a flow that does not yet exist. It decouples the present take from the present spend, so the revolt threshold stops constraining what an order can deploy; it selects for taxes collected invisibly at chokepoints, because the servicing must be permanent; and it requires a warrant the borrower does not supply, because a sovereign's promise is a licence and only a promise lodged outside his control is a title.

The formation module found a fifth condition. The corpus held kept, lost, withheld, and — from the previous study — relinquished on principle. This is

inherited intact and left running unaltered, hostile clauses and all: the Catechism untouched, the thirtieth of January still read annually for another hundred and seventy years, a comprehension scheme allowed to die in Convocation, and one clause added to one existing service. Survivable only where an order does not need the belief of the people it is forming — and carrying the standing risk that the untouched machine goes on manufacturing, every generation, people for whom the founding was a crime.

And the module on the default had to be corrected by the module on change, which is recorded here rather than tidied away. Module 8 argued that a marketable debt binds its holders where a personal debt does not, and flagged the claim as unproven. Module 10 tested it and found the claim wrong as stated: when the news from Derby reached London in December 1745 the individual holders ran for the Bank's counter to convert paper into metal. They did not defend; they liquidated. What was bound was the *corporate* creditor — a chartered body whose entire capital was a claim on this regime's taxes, which could not sell and could not flee, and which spent Black Friday paying out in sixpences and carrying the specie back in at another door. A funded debt binds through its institutions, not through its holders.

The discipline

Legibility is not pardon.

The strongest counter-position in this collection attaches to this case, and Module 12 states it at full strength before answering it: that this settlement produced constitutional monarchy, parliamentary control of taxation and the army, an independent judiciary, the defence lawyer, statutory toleration, a press without a licenser, the financial architecture of the modern world, the defeat of Louis XIV, and the vocabulary in which most of humanity now argues about government — at a cost in England of about seventy lives.

Every clause of that is true, and the answer is not that any of it is false. It is that **the goods and the costs came out of one mechanism, not two.** The liberties exist because the political nation expected to lose power and feared its own machinery; that is what generated the Treason Trials Act. The penal laws exist because the same men, running the same calculation, did not expect to be Catholic; that is what generated the hundred-pound bounty on a priest four years later, from the same chamber. There is no version of this settlement that yields the first without the second, because both are outputs of a coalition legislating its own fears with nobody else in the room.

And the bill was presented elsewhere. In England the founding cost two skirmishes and perhaps seventy lives, and produced a word — *bloodless* — that was then applied to the whole operation. In Scotland it cost several thousand in the risings, thirty in a glen,

and a famine the settlement did not cause but did not relieve. In Ireland it cost some twenty-five thousand soldiers dead in three years, several thousand civilians inside one city, over a million acres, and a century of statute designed to make a religion unteachable and a people landless.

The uncomfortable finding is that the two columns are connected by the same machinery. The funded debt that bound the creditors also paid the commissariat, and a fed army does not burn a mill — which is why the Irish civilian population came through the war of 1689–91 far better than it had come through the war of the 1640s. Getting the columns right is not the same as making them lighter.

Both columns stand. Neither cancels the other, because the people in the two columns were not the same people.

One further discipline is fixed throughout. *Glorious Revolution* is a piece of the settlement's own robe, coined and popularised by the beneficiaries. This study quotes it and never uses it as its own description of anything. The same caution attaches to *Restoration*, to *Revolution* — which in 1689 meant a turning back rather than a leap forward, and was chosen for exactly that reason — and to *abdicated*. Each is evidence. None is vocabulary.

Where this study is weak

The specific weak points are flagged where they occur and are collected here so a reader can go straight to them.

The central structural claim about creditors was made in Module 8 and corrected in Module 10, and the correction rests on observed behaviour in a single well-known episode reported late and at one remove. No price series for Bank of England stock or government annuities across 1715, 1720 and 1745 was obtained. Neal's work on the London capital market is where anyone should go to re-test it, and if the prices tell a different story the argument should be revised again rather than defended.

Module 5's load-bearing negative — that no disturbance of the 1690s was constitutional in character — rests on the general pattern reported in the literature rather than on a survey of assize and quarter-sessions records for the decade. It is the first thing to test.

Module 4's central claim rests on an absence: nothing of the Revolution entered English formation because the liturgical and catechetical record shows no change. Absence of evidence in a single channel is weaker than positive evidence, and a study with access to school texts, chapbooks and almanacs of the 1690s might qualify it.

The Rochester guard. The claim that the escape of 23 December 1688 was deliberately permitted is the settled reading of the constitutional histories and is

consistent with William's evident preference, but no order instructing the guard to look away has been produced here.

The Oxford Decree is treated in the Landscape as evidence of the doctrine the political nation held. It is not straightforwardly that: it is one university's document in a year of maximum reaction, four months after an assassination plot. It shows what the doctrine's most committed institutional custodians would say in public at its high-water mark, which is a narrower claim than a careless reading would take from it.

Burnet's *Pastoral Letter* is stated in the reference literature to have been burnt by the hangman for grounding William's claim on conquest. Module 3 does not rely on it, because the order located in the Commons Journal for January 1693 relates to Blount's pamphlet and the two may have been conflated in the secondary tradition.

The tail of the recognition clause of the Bill of Rights — *marvellous providence … upon the throne of their ancestors … did become, were, are and of right ought to be* — is given from reproductions and from Burke's close quotation, and should be checked against *Statutes of the Realm* before the text is relied on for anything further.

The four-shillings comparison that carries Module 12's title is not a like-for-like measurement. The English land tax was assessed on annual value at rates that varied and were frequently lower in peacetime, and the Polish figure comes from a different accounting tradition. The comparison is offered as an order-of-magnitude contrast between a class that taxed itself substantially and one that exempted itself almost entirely, which is not in dispute; the rates should not be set against each other as though commensurable. The comparative Polish and Prussian material is drawn from other studies in this collection and is not independently verified here.

Contested figures are given as ranges throughout and several are worse than contested: the size of William's fleet and land force; the Bloody Assizes totals; the deaths inside Derry, which run from about four thousand to about fifteen thousand across reputable sources with no point asserted; Schomberg's losses at Dundalk; Scottish famine mortality; the Darien subscription, which appears at both £150,000 and £400,000 and may reflect two different quantities; Restoration and Williamite revenue totals; and the number of nonjuring clergy.

The arc

Landscape · Clear, Absolute and Without Exception. Three kingdoms and a restored crown in the winter of 1685 — the doctrine of obedience the political nation spent twenty-five years building so that 1649 could never happen again, a Norman foundation defunded in 1660 without being disestablished, and a Scottish Test that exempted by name the one man in the kingdom who could not swear it.

1 · Utterly Disproportioned. The floor of force — a king who won his only battle and then lost his army without fighting one, the largest foreign landing since 1066 described in its own manifesto as too small to conquer anything, and the two kingdoms where the same operation cost tens of thousands of lives.

2 · Not a Word Known to the Common Law. The settlement — a revolution that moved not one acre in England, an office conveyed by the same instrument its conveyancers used for their own estates, a seventh fiction whose job is transfer without a transferor, and a million Irish acres that paid an army's arrears in freehold.

3 · As Their Ancestors in Like Case Have Usually Done. The robe — a revolution announced in the grammar of restoration, four incompatible warrants stacked in a single sentence of statute, a book burnt by the hangman for saying out loud what the fleet had done, and the philosopher who was not the government's argument.

4 · To Do My Duty in That State of Life. Formation — the machinery that made English children, which the Revolution inherited working and did not alter in a word; a kingdom that built a school in every parish at its landowners' compulsory expense; and a kingdom that made the majority's formation a crime and put nothing in its place.

5 · By Persons Unknown to Him. The cost column — why an ordinary Englishman obeyed an arrangement he had no part in making and no reason to think permanent; the tax that put a stranger in his house and the settlement that abolished it; and a country with no police in which every enforcer was a neighbour.

6 · Upon Beere Ale and Other Liquors. Extraction — a state that doubled its take and then spent half as much again on top; a parliament that voted six hundred thousand pounds to reimburse a foreign republic for the cost of invading England; a third kind of extraction the framework did not have; and the founding statute of the Bank of England, which is on its face a tax on beer.

7 · Answerable for the One, Just as He Is for the Other. Information and suppression — a state that abandoned pre-publication censorship for reasons entirely commercial and replaced it within a month with something cheaper; a student of twenty hanged in Edinburgh for what he said in a tavern; and an official inquiry that named a murder, punished nobody, and was reprinted eight years later to undeceive the public.

8 · A Sponge in His Left Hand. Elite coordination and the default — a settlement that handed out no land at all in the kingdom that mattered and manufactured its defenders out of paper instead; why the strongest binding in the three kingdoms was created by the losing side; and the variable that inverts what this collection thought it knew about creditors.

9 · To Make His and Their Full Defence. Plurality or foreclosure — the liberties this settlement created and the ones it destroyed, both enacted by the same parliament within four years; a writ suspended for the first time in English history three weeks after the crown was accepted; and the one condition that decides whether a protection is worth more than its paper.

10 · Paid in Sixpences. Change and collapse — an arrangement that did not collapse and the reasons; two armed risings that failed for the same reason and not the one usually given; a financial catastrophe that should have brought the Stuarts back and did not; and the correction to the previous module.

11 · The Kingdom Nobody Invaded. The grim accounting — why the war that should have starved Ireland did not, and why the kingdom nobody invaded lost perhaps a tenth of its people; and what actually determines whether any of it is remembered.

12 · Four Shillings in the Pound. Convergence and divergence — two nobilities that both constrained a king, one of which taxed itself and one of which did not; and the strongest counter-position in this collection, stated at full strength and answered.

A note on sources. This front matter is descriptive and makes no primary-source claims of its own; every factual assertion about the case is established, with its sources and its flags, in the module it summarises. The reader who wishes to test this study should begin with the closing notes of the modules, which are written to make that testing possible — including where it would embarrass the argument.

A last note on the historiography, because it sits beside this subject and will not move. The Whig account of 1688 is the most seductive narrative in English history. The older reading, Macaulay's and his descendants', makes this bloodless, conservative and distinctively English. Steve Pincus argues it was violent, popular and genuinely revolutionary. Jonathan Israel and the Dutch historians insist it was a Dutch invasion serving Dutch purposes which the English account systematically minimises. Tim Harris insists it cannot be written as an English event at all. This study names that disagreement rather than picking a side, and builds only on what the disputing accounts converge on.

LANDSCAPE

Clear, Absolute and Without Exception

The ground before the landing — three kingdoms and a restored crown in the winter of 1685, and the doctrine of obedience the political nation had spent twenty-five years building so that 1649 could never happen again

Why this landscape has three kingdoms in it, and a fourth ground beyond them

Every study in this collection opens by reconstructing the ground a founding fell on, and the number of grounds it has to reconstruct is itself the first finding. The Algerian study needed two, a Turkish garrison-state and a tottering Bourbon monarchy, because a colonial conqueror runs force in one place and a story about the force in another, and neither can be read without the other. The study of Henry VIII's settlement needed only one, and said so on its first page, because in 1529 there was a single realm with a second jurisdiction lodged inside it and no distance to measure except the vertical distance between a statute preamble and a commissioner's letter. The study of the Protectorate needed one country and one army that had become a second society inside it.

This case needs three, and then a fourth, and the reason is not fussiness. In February 1685 one man succeeded to three crowns that were not one crown. England and Wales, with something in the region of five million people, had a parliament that had not met for four years and a state church whose clergy had spent a generation preaching that resistance to the king was damnable in any circumstance whatever. Scotland, with something over a million, had its own parliament, its own privy council, its own law, and a bishops' church imposed on a population much of which regarded that imposition as a breach of a covenant with God, in a country where the government had for five years been shooting men at the roadside for saying so. Ireland, with somewhere between a million and a quarter and two million — every figure for Ireland in this period is a reconstruction from hearth-money returns and every one of them is disputed — had a parliament that had not been summoned since 1666, a land settlement under which the great majority of the population owned perhaps a fifth of the country, and an army of some eight thousand men who were required by administrative rule to produce certificates that they took Anglican communion twice a year.

The three were not provinces of a single state. They were three separate legal orders sharing a monarch, and the sharing was the whole of the union. A statute of the English parliament did not run in Scotland. An Irish bill could not even be introduced at Dublin until the English privy council had approved it and returned it under the great seal of England. What this meant in practice is the thing to hold, because it decides everything downstream: the same king, doing the same thing, was doing three different things at once, and the arithmetic of who gained and who lost by his doing it came out differently in each kingdom. A Catholic on the throne was, to the Anglican squire in Northamptonshire, an anomaly that would pass when his Protestant daughter succeeded him. To the Presbyterian in Ayrshire he was the man who had presided in person over the parliament that imposed the Test. To the Catholic gentleman in Connacht, dispossessed by Cromwell and only partly restored by Charles, he was the first realistic hope in forty years of getting the land back. Three kingdoms, one accession, three ledgers — and any account of what followed that runs only the English ledger has not measured the case but merely repeated the winner's summary of it.

The fourth ground lies across the North Sea, and it is a fourth ground rather than a footnote because the force that ended this order came from there. The United Provinces in 1685 were a federal republic of seven sovereign provinces, the richest state per head in Europe, in the middle of an argument with Louis XIV's France that its leading politician regarded as a fight for its existence; and that politician was William Henry of Orange, Stadholder of Holland, Zeeland, Utrecht, Gelderland and Overijssel, Captain-General and Admiral-General of the Union, nephew of the new King of England and married to the new king's elder daughter and heir. Nothing that happened in 1688 is intelligible without the Dutch ground, and the historians who work on it — Jonathan Israel most insistently — argue that the English account has for three centuries minimised the fact that a foreign state mounted the operation for its own reasons. That argument is named here rather than settled, and it will be tested against the evidence when the floor is reconstructed. What can be said at the outset is that the landscape has to include the Republic, because a study that opens with three kingdoms and no Republic has already decided the question.

What was already there had been put there twice

Before any of this can be counted, the discipline this collection holds has to be fixed, because it governs how the whole case reads.

The order that was altered in these years was not an original thing that had always been there. It was a build, and it had been built twice, and by 1685 nobody alive experienced any of it as a thing that had been put there.

The lower course was Norman. A duke with no source of title inside England took the country in an afternoon in October 1066, spent four winters making the taking hold, and then — at the point where spoil had to become inheritance, because an inheritance requires a source of title standing outside the taker's own arm — established the principle on which the whole of English property afterwards rested: that no man in England owns land outright, but holds it, ultimately, of the crown. That proposition was not a theory anybody argued for in the seventeenth century. It was the shape of property itself. A gentleman defending his estate in 1685 was not defending a Norman arrangement; he was defending his land, and the fact that the two had once been the same operation had long since become invisible.

The upper course was Tudor. Henry VIII abolished the jurisdiction his predecessors had rented from Rome, appointed himself to the vacated office, and — by one clause of the Act of 1534 — had the supremacy annexed and united to the imperial crown of the realm and vested in the king and his heirs and successors, which converted a personal victory into heritable crown property and is the reason it outlived him by centuries. To prove the operation lawful he had to argue from a text, and to argue from a text in a realm he was persuading he had to publish it, and so an English Bible went out on a chain into every parish in the kingdom. A hundred and ten years later men formed by that book tried his granddaughter's nephew in Westminster Hall and cut off his head, and could not replace what they had destroyed, and their arrangement lasted nine years.

Hold both halves of the discipline. Naming a constructed origin is not debunking it. A built thing that became real is more genuine and more durable than any lie, because a lie has to be maintained and a naturalised order does not: the English monarchy of 1685, with its coronation oath and its parish church and its law running in the king's name, was authentically the framework of reality for the overwhelming majority of English people, and the men who defended it were not dupes reciting a script. And the rule runs forward with exactly equal force, which is the harder half. The settlement that these years produced was also a build, assembled by lawyers and landowners under pressure, using fictions they chose deliberately; and it also became real, and it is the constitution under which the United Kingdom is still governed. A study that names the first build a construction and treats the second as the discovery of a truth has not been analysing. It has been taking sides.

The half-cut nobody announced

And now the fact that this landscape exists to put on the table, because it is the beginning of the case's deepest question and the men who did it appear not to have understood what they were doing.

On 24 December 1660 the restored parliament gave the royal assent to an Act with a title that reads like a conveyancer's inventory: *An Act takeing away the Court of Wards and Liveries and Tenures in Capite and by Knights Service and Purveyance, and for setling a Revenue upon his Majesty in Lieu thereof*. Its preamble is an argument from consequences rather than from right — that the Court of Wards and the military tenures "have beene much more burthensome grievous and prejudiciall to the Kingdome then they have beene beneficiall to the King" — and its operative sections swept away wardship, marriage, primer seisin, livery, ouster le main, fines for alienation, knight service, tenure in capite and purveyance, the entire revenue apparatus a Norman duke had fastened on English land in the 1070s. In their place the crown received a hereditary excise, an annual sum charged principally on beer, of a hundred thousand pounds. William Blackstone, a century later, called the statute a greater acquisition to the civil property of this kingdom than even Magna Carta itself, on the ground that the charter had only pruned the military tenures while this had demolished root and branch.

Blackstone was overstating it, and the overstatement is the point.

Read the fourth section of the Act, which is where the drafting actually lives. It provides that all tenures thereafter created by the king "upon any gifts or grants of any Mannours Lands Tenements or Hereditaments of any Estate of Inheritance at the common Law shall be in free and common Soccage, and shall be adjudged to be in free and common Soccage onely, and not by Knight service or in Capite". The tenures were not abolished. They were *converted*. Land in England after December 1660 was still held of the crown; it was simply held on a tenure that cost the holder nothing and paid the crown nothing. The doctrine that all title descends from the king survived the statute completely intact, and what did not survive was the crown's income from it, which was replaced by a tax on somebody else's beer.

The framework holds that a settlement binds its beneficiaries because the grantee's title is sourced in the instrument, so that a man defending his own holding defends the whole arrangement without being told to and without needing to approve of anybody. What happened in December 1660 is the separation of the source from the payment. After that Act, every landowner in England still held his estate of the crown as a matter of law, and no landowner in England paid the crown anything for the privilege or would lose anything he could name if the doctrine were altered. A proposition that

costs nobody anything is a proposition nobody is watching. That is the condition in which a foundation can be moved without anyone at the time saying out loud that it is being moved — and whether it was in fact moved between 1685 and 1701, or whether it merely acquired a new vocabulary while standing exactly where it was, is the question this whole study exists to answer.

Note also who paid for the change and who received it. The obligations abolished were owed by landowners. The excise that replaced them was paid, weekly and in small sums, by everybody who drank beer, which in seventeenth-century England was very nearly everybody. And the excise itself was not a Stuart invention at all; it was created by the parliament of 1643 to fund a war against the king's father, and was the fiscal engine of the republic. The restored monarchy relieved the landed class of a Norman obligation and paid the crown compensation out of a republican tax on the poor. The Cromwell study found that the fiscal machinery of the 1650s was the one thing the restored monarchy kept in its entirety. This is the clause where the keeping is visible.

What the Restoration restored, and what it quietly kept

The word *Restoration* is doing a great deal of work and should be inspected before it is used, because it is the same kind of word as *Revolution* and both of them are in this study's evidence rather than in its vocabulary.

What was restored in 1660 was the king, the House of Lords, the bishops, the Prayer Book, the church courts, the commissions of the peace in the hands of the county families who had always held them, and the legal fiction that the eleven years had not occurred — Charles II's regnal years were dated from 30 January 1649, so that his reign had legally begun on the afternoon of his father's execution and the Protectorate had never happened. The confiscated estates of royalists and the lands of the crown and the church went back. The Act of Indemnity and Oblivion pardoned almost everybody, excepting the regicides, and the exceptions were hunted with a thoroughness the Act's title does not suggest.

What was *not* restored is the more interesting column. Land that royalists had sold themselves, to raise the money for their own composition fines, stayed sold, because the losing owner's own hand had been on the instrument. The prerogative courts of the 1630s — Star Chamber, High Commission — did not come back. Ship money did not come back. And the fiscal machinery of the Interregnum came back entire under new management: the excise, the customs establishment, the monthly assessment that became the land tax, and the naval administration. A state that had spent the 1650s learning to tax at three times the rate that had provoked a civil war handed the apparatus intact to the dynasty that repudiated everything else about it.

Two statutes settle the military question and both are worth reading in their own drafting. The Act of 1661 declaring the sole right of the militia opens with a recital that is a piece of constitutional argument disguised as a statement of fact:

> *Foresmuch as within all His Majesties Realmes and Dominions the sole Supreme Government Command and Disposition of the Militia and of all Forces by Sea and Land and of all Forts and Places of strength is and by the Lawes of England ever was the undoubted Right of His Majesty and His Royall Predecessors Kings & Queenes of England and that both or either of the Houses of Parliament cannot nor ought to pretend to the same nor can nor lawfully may raise or leavy any Warr Offensive or Defensive against His Majesty His Heires or lawfull Successors and yet the contrary thereof hath of late yeares beene practised almost to the Ruine and Destruction of this Kingdome ...*

Note the grammar. It does not enact that the militia shall belong to the king; it reports that it always did, and that the last twenty years were an aberration. This is the insider's grammar the study of Henry VIII's statutes identified — *is and ever was*, nothing new is happening, a usurpation is merely being removed — and it is the exact opposite of the grammar the regicides had used in 1649, when they abolished the kingly office on the ground that it had been "found by experience" to be unnecessary, burthensome and dangerous. An argument from experience can be answered by experience. An argument from what always was cannot be answered at all, which is why it is the stronger drafting and why the Restoration reached for it.

The second is the Triennial Parliaments Act of 1664, and it is the cleaner tell. The Act of 1641 had required a parliament every three years and had supplied the machinery to make it happen: if the king failed to issue writs the Lord Chancellor was to issue them, and failing that the Lords could assemble and issue them themselves. The 1664 Act repealed it on the express ground that it was "in Derogation of His Majestyes just Rights and Prerogative inherent to the Imperiall Crowne of this Realme for the calling and assembling of Parliaments", and replaced it with a section headed, in the printed statute, *No longer Intermission of Parliaments than Three Years* — a duty with no enforcement clause attached to it at all. It was a rule addressed to a king's conscience. After the Oxford parliament was dissolved on 28 March 1681 no parliament met in England for the remaining four years of the reign, and nothing whatever happened as a result, because nothing had been provided that could happen.

The revenue was voted on the assumption that the king needed about £1,200,000 a year for the ordinary charge of government, and for a decade it did not produce that; a hearth tax was added in 1662 to close the gap and was hated for the searchers it put through people's doors. By the last years of the reign a long expansion of trade had

lifted the customs and excise well past the target, which is what made the four years without a parliament possible. The precise totals are contested and belong properly to the extraction module; what belongs here is the structural fact that by 1685 an English king could, in peacetime, live of his own — and that a king who can live of his own does not need to meet anybody.

The corporations were the last piece, and the most recent. From 1682 the crown proceeded by writs of quo warranto against the boroughs, demanding by what warrant they exercised their franchises. The judgment against the City of London in Trinity term 1683 is recited in the statute that reversed it seven years later: that the liberty, privilege and franchise of the mayor and commonalty and citizens, "being a Body Politicke and Corporate should be seized into the Kings Hands as forfeited". Once London had fallen, borough after borough surrendered its charter and received a new one in which the crown named or could remove the governing officers. Since the boroughs returned the great majority of the House of Commons, the effect was that whoever next summoned an English parliament would summon one he had substantially selected. That is the machine James inherited, and it is why his first parliament was the most compliant in living memory.

The doctrine, and what was paid for it

Now the thing this landscape is named for, because it is the load the whole case rests on.

Between 1661 and 1665 the English parliament installed, in statute and by oath, a doctrine of political obedience of a strictness that has no parallel in English legislation before or since. The Corporation Act of 1661 required every mayor, alderman, recorder, bailiff, town clerk and common councilman to swear, in addition to the oaths of allegiance and supremacy, this:

> *I. A. B. do declare and beleive That it is not lawfull upon any pretence whatsoever to take Arms against the King and that I do abhor that Traiterous Position of taking Arms by His Authority against His Person or against those that are commissionated by him ...*

The Act of Uniformity of 1662 put the same words into the mouth of every clergyman, lecturer and schoolmaster in England, with the addition of a renunciation of the Solemn League and Covenant as an unlawful oath, and gave them until St Bartholomew's Day, 24 August 1662, to say them. Something close to two thousand ministers would not — the count depends on whether the ejections of 1660 are

included in it, and it is argued about — and they left their livings. The Conventicle Act of 1664 and the Five Mile Act of 1665 completed the enclosure, penalising worship outside the church and forbidding an ejected minister to come within five miles of a place where he had served.

Read the drafting of the declaration as drafting. Two phrases carry it. *Upon any pretence whatsoever* forecloses the excuse in advance: no ground, no emergency, no provocation, no religion, no law, nothing. And the abhorrence of "taking Arms by His Authority against His Person" is aimed with precision at the specific device by which the parliamentarians of 1642 had squared their consciences — the fiction that the king's legal authority could be separated from his physical person and that one could be defended against the other. That fiction is named in the oath and killed. This is not a general exhortation to be good. It is a lawyer's instrument, written by men who had read the arguments of the 1640s closely and had gone through them line by line, closing each door as they came to it.

The doctrine was not merely legislated; it was preached, annually, in every parish. The Book of Common Prayer of 1662 carried among its state services *A Form of Prayer with Fasting, To be used yearly on the Thirtieth of January, Being the Day of the Martyrdom of the Blessed King Charles the First*, and it was read every year until 1859. For two centuries the one thing the English were formally required by their own liturgy to remember about the trial of a king was that it had been a martyrdom, and that the guilt of that innocent blood might yet be visited upon them.

Then, in 1680, someone published a book that had been sitting in a drawer for forty years. Sir Robert Filmer had died in 1653; *Patriarcha, or the Natural Power of Kings* was very probably finished before the civil war began, and it appeared in print in the middle of the Exclusion Crisis because that was when it was wanted. Its argument is that political authority is paternal authority, descended from Adam by way of the patriarchs, and its opening move is to identify the enemy: the opinion, maintained by schoolmen and divines, that mankind is "naturally endowed and born with freedom from all subjection, and at liberty to choose what form of government it please, and that the power which any one man hath over others was at first bestowed according to the discretion of the multitude". Filmer notes that the common people everywhere embrace this opinion tenderly, being most plausible to flesh and blood, never remembering that the desire of liberty was what caused the fall of Adam. A text written for one crisis, retrieved and printed for another, by men who needed an argument and found one already made — which is exactly the operation the collection has watched inheritors perform on founders' texts in half a dozen other cases, and it is the ordinary way robes get made.

And on 21 July 1683, three weeks after the discovery of a plot to assassinate the king and his brother on the road from Newmarket, the University of Oxford met in convocation and passed the document that gives this landscape its title. The *Judgment and Decree of the University of Oxford against certain pernicious Books and damnable Doctrines* opens with the assassination attempt, moves to the impious doctrines which "gave rise and growth to those nefarious attemts", and then lists twenty-seven propositions and condemns every one of them as false, seditious and impious, most of them also heretical and blasphemous.

The first four are these:

1. *All Civil Autority is derived originally from the People.*
2. *There is a mutual compact, tacit or express, between a Prince and his Subjects; and that if he perform not his duty, they are discharg'd from theirs.*
3. *That if lawful Governors become Tyrants, or govern otherwise then by the laws of God and man they ought to do, they forfeit the right they had unto their Government.*
4. *The Soveraignty of England is in the three Estates, viz. King, Lords, and Commons. The King has but a coordinate power and may be overruled by the other two.*

The fifth condemns the proposition that "Birthright and proximity of bloud give no title to rule or Government, and it is lawful to preclude the next heir from his Right of Succession to the Crown." The sixth condemns the proposition that subjects may, without the consent of the supreme magistrate, "enter into leagues, covenants and associations, for defence of themselves and their religion". The books were ordered burnt by the hand of the University Marshal in the court of the Schools, copies of the decree were to be posted in every college library, and every tutor and catechist in Oxford was commanded to ground his scholars in the doctrine which "in a manner is the Badge and character of the Church of England, of submitting to every Ordinance of man for the Lords sake" — teaching, in the decree's own words, "that this submission and obedience is to be clear, absolute and without exception of any State or order of men."

Set that against what a Convention would resolve in Westminster five and a half years later: that King James the Second, having endeavoured to subvert the constitution of the kingdom by breaking the *original contract between king and people*, had abdicated the government, and that the throne was thereby vacant. The second proposition condemned at Oxford is the operative clause of the settlement of 1689, in

nearly the same words, and the men who voted for it in 1689 included men who had been in Oxford in 1683. The arithmetic is laid out; the reader can do the sum.

Two things must be said about this doctrine before the study proceeds, and they pull in opposite directions, which is the reason for saying both.

The first is that it was genuinely and expensively acquired, which by the framework's sharpest diagnostic makes it load-bearing rather than decorative. Force never pays for what it does not need. The restored crown held the militia, the guards, the garrisons and the fleet; it was under no compulsion whatever to purchase the conviction of the parish clergy, and it purchased it anyway, at the price of ejecting something like a fifth of its own ministry, creating a permanent dissenting interest of several hundred thousand people, and forfeiting whatever those men and their congregations would otherwise have contributed. An apex that already holds uncontested force and still pays a real, avoidable cost for legitimacy has revealed by the expenditure that the legitimacy was necessary to some audience whose compliance mattered. The audience here was the Anglican clergy and the county gentry who filled the commissions of the peace and the militia — the men who actually governed England, unpaid, in every shire — and their conviction that resistance was damnable was the cheap foundation on which a very small permanent army was allowed to rest. On the minister's own account, given in the Commons in November 1685, the English standing forces before that summer had numbered around seven or eight thousand men. That figure, in a country of five million, is not the floor of a police state. It is what a floor costs when the belief above it has genuinely taken.

The second is that a doctrine which has to be stated in the terms this one was stated in is a doctrine whose drafters have already imagined the breach. *Not lawful upon any pretence whatsoever. Clear, absolute and without exception of any State or order of men.* Nobody drafts like that about a proposition nobody has thought of denying. Every absolute in those documents is a door being closed, and the number of doors tells you how recently men had walked through them.

Scotland, where the doctrine was run at full strength

Scotland is where the same order shows what it looked like when the belief had not taken, and the difference is the most useful single comparison this landscape offers, because the crown is the same crown and the doctrine is the same doctrine and the result is not remotely the same.

The Restoration in Scotland was harder and faster than in England. On 28 March 1661 the Scottish parliament passed the Act rescinding and annulling the pretended parliaments of 1640, 1641 and after, which at a stroke annulled the legislation of every

parliament since 1633 and with it the whole legal achievement of the Covenanting revolution. Separate acts asserted the king's prerogative in choosing his own officers of state, in calling and dissolving parliaments, and in making war and peace. The Lords of the Articles — a steering committee which in practice settled what parliament would be permitted to consider — were restored, so that the Scottish parliament became an instrument the crown could manage in a way the English parliament could not. Episcopacy was restored by proclamation of the privy council in September 1661 and confirmed by statute the following year, and because the Rescissory Act had voided the appointments of every minister settled between 1649 and 1661, several hundred ministers — the standard count runs to something under four hundred, and it varies with the criteria — were held never to have been lawfully appointed at all and were put out.

The consequence was a quarter of a century of intermittent armed resistance in the south-west, and a government response that escalated from fines to free-quartered soldiers to field executions. By 1684 the privy council had authorised summary execution of those taken in arms or refusing an oath abjuring the Covenants, and that oath was drafted precisely so that a Covenanter could not take it. What the Covenanter historian Robert Wodrow later named the Killing Time is contested in its arithmetic in the way such things always are: around a hundred executions are recorded on the council's own orders, while the martyrologies claim vastly more, and the difference between the two figures is itself a fact about who was keeping which records.

In August 1681, with the Duke of York sitting in Edinburgh as his brother's commissioner, that parliament passed two acts which between them state the Scottish position with a clarity no English statute matches.

The first asserted the right of succession to the imperial crown of Scotland by lineal descent, tracing the line back to a legendary first king and grounding the whole in a royal power derived, in the act's phrase, from God Almighty alone — a direct legislative answer, from one of the king's kingdoms, to the Exclusion Bills being debated in another.

The second was the Test. The Act anent Religion and the Test required an oath of every person in public trust in the kingdom — every member of parliament and every elector of one, every privy councillor, every judge, every officer of the crown, every archbishop, bishop, preacher and minister, every sheriff and magistrate and justice of the peace, every advocate and notary, every collector of customs and excise, every master and doctor in universities and schools, every chaplain in a family, every tutor to children, and every officer and common soldier in the forces. They were to swear that they professed the Protestant religion of the Confession recorded in the first parliament

of James VI; that the king was "the only supreme governor of this realm, over all persons and in all causes, as well ecclesiastical as civil"; and that they judged it unlawful for subjects, "upon pretence of reformation or any other pretence whatsoever", to enter into covenants or leagues, or to assemble to treat of any matter of state without the king's licence, "or to take up arms against the king or those commissioned by him". They were to swear it in the plain, genuine sense of the words, without equivocation or mental reservation, and to accept no dispensation from it from any creature whatsoever.

And in the middle of that sentence, in the clause listing the penalties for exercising office without having sworn, sits a parenthesis: *(the king's lawful brothers and sons only excepted)*.

The whole political nation of Scotland was required to swear the Protestant religion, on pain of losing its movables and being declared incapable of public trust for ever, and the statute exempted by name the one man in the three kingdoms who could not swear it — the Catholic heir, who was in the room, presiding. Two members recorded their dissent from the extension of the Test to the electors of shire commissioners. The Earl of Argyll, the greatest magnate in the western Highlands, took the oath with a written explanation that he understood it only so far as it was consistent with itself and with the Protestant religion, was prosecuted for treason on the strength of that explanation, was condemned in December 1681 on a charge the standard accounts describe as legally worthless, and escaped abroad. He will be back in this study within four months of James's accession, and he will be beheaded.

That is what the doctrine looked like where it had to be enforced rather than believed. Surveillance is the tell of a belief that never took, and Scotland in 1685 had lists: the act required every parish minister to return, annually and under his own subscription, the names of all papists and all withdrawers from public worship in his parish, the bishops to send duplicates to the sheriffs and further duplicates to the clerks of privy council, and the sheriffs to account in December each year for what they had done about the names. A state that has to count its subjects' attendance at church, parish by parish, every October, and then audit the men doing the counting, is not being obeyed out of conviction. It is being obeyed under observation, and it knows it.

Ireland, where the settlement stood

Ireland's landscape is a land settlement and very little else, and its distinguishing feature within this collection is that it is the one Cromwellian settlement that was not reversed.

Before 1641, Catholics — the great majority of the population, comprising both the Gaelic Irish and the Old English descended from the medieval conquest — held something in the order of sixty per cent of the profitable land of Ireland. The Cromwellian confiscations of the 1650s took very nearly all of it, on the criterion that a man lost three-quarters of his estate unless he had manifested his constant good affection to the interest of the Commonwealth of England; by the end of the decade Catholic landholding is generally put at eight or nine per cent. At the Restoration the Irish parliament's Act of Settlement of 1662 and Act of Explanation of 1665 partially unwound this, restoring "innocent" Catholics and named royalists by requiring the Cromwellian grantees to give up a third of what they held. The unwinding was partial by design: there was never enough land to satisfy both the claims of the dispossessed and the claims of the adventurers and soldiers who had been paid in Irish acres, the court of claims was adjourned with thousands of cases unheard because too many claimants were proving innocent, and the settlement that emerged left Catholics holding perhaps a fifth to a little over a fifth of the country. All these figures are reconstructions from imperfect surveys and all are argued about; the range matters more than any point within it.

What matters structurally is that this was a settlement in which two large groups had directly opposed defaults and both knew it. The Protestant landowner in Ireland held an estate whose title ran back through a confiscation to an English statute, and would lose it if that statute were reopened; his interest in the arrangement was total and did not depend on his liking anybody. The Catholic landowner had been dispossessed within living memory by an instrument that was still on the books, had watched a partial restoration stop short, and would gain by any reopening whatever. Run the framework's question down that hierarchy — if this arrangement were reversed tomorrow, would this man be better or worse off? — and Ireland answers it in two voices that cannot be reconciled, because unlike a rate of extraction, land taken as a stock has no setting between the parties. There is no rate at which a man half-holds a farm.

Around this sat the rest of the apparatus. No Irish parliament met between 1666 and 1689, and none was needed, because the revenue was buoyant and the establishment paid for itself. Poynings' Law meant that when one did meet it could consider only what London had already approved. The army, some eight thousand two hundred men on the establishment in 1685, was Protestant by administrative requirement, its officers and men expected to produce certificates of Anglican communion. The corporations were closed to Catholics by oath. The great majority of the population of the kingdom was excluded from the parliament that governed it, the

corporations that ran its towns, the army that garrisoned it, and the ownership of four-fifths of its soil.

The Cromwell study found that memory tracks possession rather than atrocity — that England forgot the 1650s because the land settlement had been reversed and there was nothing left in the fields to contradict the forgetting, while Ireland remembered because the settlement was still standing on the ground every morning. In 1685 the Irish settlement was standing. Everything that happens in Ireland in this study happens because a Catholic king came to a throne under which a Catholic gentry had a specific, nameable, legally identifiable thing to gain, and a Protestant interest had exactly the same thing to lose.

February 1685: the position at its strongest

Charles II died at Whitehall on 6 February 1685, having been received into the Catholic church on his deathbed, a fact known to few at the time. His brother succeeded him without a hand raised anywhere in three kingdoms.

It is worth pausing on how complete the position was. The man against whose succession three parliaments had been dissolved in two years, who had been the subject of three Exclusion Bills, who had been named as the beneficiary of a fabricated plot to murder his brother, and whose religion was the single most detested thing in England, inherited without incident. He had a revenue that did not require him to call a parliament. He had the boroughs, remodelled by his brother's lawyers, so that when he did call one it would be composed of men he had substantially selected. He had a bench of judges he could remove. He had a church whose every clergyman had sworn in writing that it was not lawful upon any pretence whatsoever to take arms against him, and whose senior university had formally condemned as impious and blasphemous the proposition that there was any contract between him and his subjects at all. He had a Scottish parliament that had asserted his hereditary right in statute and a Scottish army that had spent five years shooting the men who denied it. He had an Irish establishment that ran without a parliament and a large Irish population with reason to hope from him.

Within a quarter of an hour of his brother's death he went to the privy council and made an unscripted speech which was printed in the *London Gazette*, read from pulpits and copied into letters across the kingdom. He repeated it, deliberately and in the same words, to his parliament on 22 May, saying that he had chosen to use the same words "the better to evidence to you, that I spoke them not by Chance, and consequently that you may firmly rely upon a Promise so solemnly made." The words were these:

> *I will make it my Endeavour to preserve this Government both in Church and State, as it is now by Law Established; and as I will never depart from the just Rights and Prerogatives of the Crown, so I will never invade any Man's Property; and you may be sure, that having heretofore ventur'd my Life in the Defence of this Nation, I will still go as far as any Man in preserving it, in all its just Rights and Liberties.*

The parliament that heard it answered in kind, and its answer is the last fact this landscape needs.

On the same day, before it had done any other business, the Commons resolved *nemine contradicente* that all the revenue enjoyed by the late king should be granted to his successor and settled upon him for his life. The bill was read a second time on the 25th, engrossed the same day, passed on the 26th, and returned from the Lords without amendment on the 27th. On the 27th the House also considered an address asking the king to enforce the penal laws against dissenters, declined to put the question, and resolved instead, again *nemine contradicente*, "That this House doth acquiesce, and entirely rely, and rest wholly satisfied on his Majesty's gracious Word, and repeated Declaration to support and defend the Religion of the Church of England, as it is now by Law established, which is dearer to us than our Lives."

When the Speaker, Sir John Trevor, presented the revenue bill, he told the king that the Commons had granted it "with all Readiness and Chearfulness, and that without any Security for their Religion, tho' it be dearer to them than their Lives, relying wholly on your Royal Word for the Security of it". The king, thanking the House for an earlier vote, had already given the analysis in one sentence: "I rely on the Assurances you have given me, which are the natural Effects of Monarchical Church of England Men."

He was right about what they were, and they were right about what he had said. Neither was lying. A House of Commons had handed a Catholic king the revenue of the crown for life, in the first fortnight of his reign, without conditions, and had put on the record that it was doing so on his word alone and had considered and rejected the idea of asking for anything in writing. That is the position at its maximum. Everything this study measures is measured from there.

The seam this study will pry at

Set the grounds against each other and four questions define the modules.

The first is the founding position, and the framework does not currently have an entry for it. The collection holds three: the outsider conqueror, who arrives from beyond the order, needs no lawfulness until his grants must become heritable, and

therefore lays the floor first and fits the story afterwards; the lawful apex, who already holds the country and cannot act as a conqueror without reopening every title in his realm including his own, and therefore legislates first and applies force only to refusers; and the armed insider who destroys the office he served, and gets the disadvantages of both. William of Orange is none of these. He is a foreign sovereign prince who arrived with an army and a fleet, invited in writing by insiders, married to the heir, claiming not to take but to restore, and issuing his justification before he sailed rather than after he landed. Working out what that is, and whether it is a fourth position or a hybrid of two, is the study's first structural task.

The second is the settlement's fiction. The collection now holds a catalogue of the devices by which a taking is made lawful, and the question here is whether *abdication and vacancy* belongs in it — a fiction that manufactures a lawful vacancy in an office whose holder is alive, at liberty, and claiming, and does so precisely in order to avoid the two honest descriptions, deposition and conquest, either of which would have reopened everything. The Cromwell study found that what England drew from 1649 was not "a king may be tried" but "never that again — do it this other way", and predicted that 1688 would be arranged so as to avoid trying anybody. That prediction is tested here.

The third is the default, and it turns on a finding that may invert. The Protectorate's floor was held by an army owed years of arrears, and the Cromwell study established that a creditor is not a defender, because a claim on the state can be discharged by anybody solvent and the identity of the payer is a matter of indifference to the man holding the claim; in 1660 a parliament paid the arrears and the most formidable army in Europe went home. The financial machinery built after 1694 may reverse that exactly, because a man holding stock in a bank secured on parliamentary taxes owns an asset that a restored Stuart would repudiate as the debt of a usurper — which would convert the creditor from the least bound party in the arrangement into the most bound. Whether that holds is the sharpest question in the study and the likeliest explanation of why this settlement survived armed challenges in 1715 and 1745 that the Protectorate could not have survived for a fortnight.

And the fourth is the warrant, which is what the case exists for. The doctrine that all title in England descends from the crown was laid by a Norman with no title of his own, was defunded but not disestablished in December 1660, and by 1685 cost nobody anything and was therefore watched by nobody. Between 1685 and 1701 the ground of political authority in England either moved — from a right descending from God through a bloodline, to something resting on an original contract and on property held before and independently of government — or it did not move at all and merely

acquired a fashionable new vocabulary in which to describe an arrangement reached for reasons of expedience by lawyers who were not theorists. Both accounts have serious historians behind them and the sources will have to decide it. What can be said now is that the Convention of 1689 adopted a legal fiction rather than a theory; that the most famous statement of the new ground was published anonymously and was not the government's argument; and that establishing when, if ever, it became the official story is a piece of research this study owes the reader rather than an assumption it may make.

One discipline is fixed here and held throughout. The phrase *Glorious Revolution* is a piece of the settlement's own robe, coined and popularised by the beneficiaries, and this study will quote it and will never use it as its own description of anything. The same caution attaches to *Restoration*, to *Revolution* itself — which meant, in 1689, a turning back to a prior state rather than a leap to a new one, and was chosen for exactly that reason — and to the word *abdicated*. Each of these is evidence. None of them is vocabulary.

Reading the landscape against the framework

The refinement this ground supplies concerns the settlement leg, and it can be stated in one line before it is unpacked: **a source of title can be defunded without being disestablished, and the defunding is what makes it moveable.**

The framework holds that a settlement binds because the beneficiary's title is re-sourced — same ground, same man, same neighbours, but a claim that now comes from a register the ruler keeps and a court the ruler runs, so that the holder defends the arrangement because the arrangement is what makes his holding his. The mechanism is normally described as though source and payment travel together, because in most cases they do: the man who holds of the crown owes the crown something, and the something is what keeps him aware of whose register his name is in.

December 1660 separated them. The Tenures Abolition Act converted every military tenure in England into free and common socage and compensated the crown out of an excise on beer, which left the doctrine that all land is held of the king standing in perfect legal health while removing every payment that ran along it. What resulted was a proposition that was still the formal foundation of English property, still true in every conveyance, and attached to nobody's interest whatsoever. No landowner had anything left to defend in it. No revenue depended on it. It had become, in the exact sense the framework uses, furniture — and furniture is what people walk past.

The diagnostic that follows is usable elsewhere, and it should be tested in the other cases rather than assumed from this one. Where a study finds a foundational doctrine of title that has been stripped of its revenue but left formally in force, it has found the

place where the order is most likely to be altered without resistance and without anybody at the time announcing that an alteration has occurred, because the constituency that would have noticed was paid off a generation earlier and no longer exists. The absence of a defender is not the absence of a doctrine. It is the condition in which a doctrine can be replaced by a different one under the same name.

Two smaller observations attach, and they are entered as things to test rather than as revisions claimed.

The first concerns the shape of a robe built after a catastrophe. The Cromwell study's principal contribution was that a failed order leaves negative residue — prohibitions rather than privileges, written into the next settlement as express negatives, and more durable than privileges because a privilege needs a beneficiary to defend it while a prohibition needs only the memory of the disaster. The Restoration doctrine of non-resistance is that mechanism working at full strength and one stage earlier than the study found it: it is not a positive account of why the king should be obeyed so much as a systematic closure of every argument by which he had once not been. The abhorrence of taking arms by the king's authority against his person is a clause aimed at a specific device used in 1642 by men some of whom were still alive. Whether robes built as negations behave differently from robes built as assertions — whether, in particular, they are more brittle, because a negation can be defeated by a single admitted exception while an assertion cannot — is a question this case is unusually well placed to answer, and it will be answered when the settlement's own robe is reconstructed.

The second is a drafting tell, and it may be a small addition to the revealed-preference test. That test reads expenditure: an apex that already holds uncontested force and still pays a real, avoidable price for legitimacy has revealed that some audience's belief was genuinely load-bearing. The equivalent in a legal instrument is the anti-exception clause. *Not lawful upon any pretence whatsoever. Clear, absolute and without exception of any State or order of men. Without any equivocation, mental reservation or any manner of evasion whatsoever.* Nobody drafts an absolute against a proposition nobody has thought of denying, and the elaboration of the absolute measures how recently, and how successfully, the denial has been made. Which is why the parenthesis in the Scottish Test — *the king's lawful brothers and sons only excepted* — is the single most informative dozen words in this landscape. In the statute that required an entire kingdom to swear the Protestant religion without evasion or dispensation, the drafters carved out by name, in advance and in public, the one man they knew could not swear it. They were not being careless. They were being precise about where the fault ran, and three and a half years later the fault opened exactly there.

A note on sources. Quoted exactly from public-domain primary texts: the *Judgment and Decree of the University of Oxford past in their Convocation July 21. 1683*, at the opening on the assassination attempt and the impious doctrines, at propositions 1 to 6, and at the closing instruction to tutors on submission being "clear, absolute and without exception of any State or order of men", from the Text Creation Partnership transcription of the 1683 English printing; the declaration required by the Corporation Act 1661 (13 Cha. 2 St. 2 c. 1) and by the Act of Uniformity 1662 (14 Cha. 2 c. 4), at "not lawfull upon any pretence whatsoever to take Arms against the King", from *Statutes of the Realm*, the two Acts agreeing in wording; the preamble to the Act declaring the sole right of the militia to be in the King (13 Cha. 2 St. 1 c. 6), from *Statutes of the Realm*; the Tenures Abolition Act 1660 (12 Cha. 2 c. 24), at its preamble on the courts of wards being "much more burthensome grievous and prejudiciall to the Kingdome then they have beene beneficiall to the King" and at section IV on tenures created thereafter being "in free and common Soccage ... onely, and not by Knight service or in Capite"; the Triennial Parliaments Act 1664 (16 Cha. 2 c. 1), at the repeal recital on the 1641 Act being "in Derogation of His Majestyes just Rights and Prerogative inherent to the Imperiall Crowne of this Realme", and its marginal heading *No longer Intermission of Parliaments than Three Years*; the recital of the 1683 quo warranto judgment against the City of London, at "should be seized into the Kings Hands as forfeited", quoted from the preamble of the Act reversing it (2 Will. & Mar. c. 8); the Scottish *Act anent Religion and the Test* of 31 August 1681, at the description of the offices covered, at the oath itself including "the only supreme governor of this realm, over all persons and in all causes, as well ecclesiastical as civil" and "upon pretence of reformation or any other pretence whatsoever", and at the parenthesis "(the king's lawful brothers and sons only excepted)", from the modernised translation in the *Records of the Parliaments of Scotland to 1707*, which also records the dissent of the lairds of Saltoun and Grant; James II's speech to both Houses of 22 May 1685, at "I will make it my Endeavour to preserve this Government both in Church and State" through "in all its just Rights and Liberties", and at "the better to evidence to you, that I spoke them not by Chance", together with his answer at "the natural Effects of Monarchical Church of England Men", the Commons resolutions granting the revenue for life and acquiescing in the king's word, and Speaker Trevor's presentation of the revenue bill at "without any Security for their Religion", all from *The History and Proceedings of the House of Commons*, volume 2 (London, 1742); and Sir Robert Filmer, *Patriarcha* (1680), at "naturally endowed and born with freedom from all subjection, and at liberty to choose what form of government it please". Blackstone's

judgment on the Tenures Abolition Act, at "a greater acquisition to the civil property of this kingdom than even Magna Carta itself", is from the *Commentaries*, book II.

Paraphrased and credited to modern scholarship, or drawn from the standard reference literature: the constitutional structure of the three kingdoms and the operation of Poynings' Law; the narrative of the Restoration settlement in England, the Clarendon Code and the Great Ejection; the campaign of quo warranto against the boroughs from 1682; the Restoration settlement in Scotland, the Rescissory Act, the restoration of episcopacy and of the Lords of the Articles, and the events of the Killing Time; the Irish Acts of Settlement and Explanation and the operation of the court of claims; the position of the Prince of Orange in the United Provinces; and the account of James II's speech to the privy council and its printing in the *London Gazette*.

Contested figures are given as ranges and several are worse than contested. The population of England and Wales in the 1680s is a reconstruction, conventionally around five million; Scotland's is an estimate of the order of a million and is not asserted more precisely here; Ireland's is the least secure of the three, resting ultimately on hearth-money returns and on Petty's household multipliers, which one specialist analysis argues understate the total, and the range of one and a quarter to two million should be read as an admission of ignorance rather than a finding. The proportion of Irish land in Catholic hands is given as roughly sixty per cent before 1641, eight or nine per cent after the Cromwellian confiscations, and a fifth to a little over a fifth after the Restoration Acts, on figures which derive from imperfect surveys and vary between authorities. The number of ministers ejected in England in 1662 is given as close to two thousand and depends on whether the ejections of 1660 are counted; the Scottish figure of somewhat under four hundred varies with the criteria used. The executions of the Killing Time are given as around a hundred on the privy council's recorded orders, against very much larger claims in the Covenanter martyrologies, and the dispute is named rather than resolved. The strength of the Irish military establishment in 1685 is given as some 8,238 on the standard account and rests on a single figure that should be re-verified before it is built upon; the English figure of seven or eight thousand before the summer of 1685 is derived from a minister's statement in Commons debate in November 1685 that the forces then stood at fourteen or fifteen thousand and had been about half so many before, which is a debating figure and is treated as such. Restoration revenue totals are genuinely disputed among specialists and no precise figure for the crown's income in the 1680s is asserted here; the £1,200,000 target of the 1660 settlement is well attested and the shortfall in the first decade is not disputed.

Two things that would embarrass the argument are flagged now rather than later. First, this landscape treats the Oxford Decree of 1683 as evidence of the doctrine the

political nation held, and it is not straightforwardly that: it is a document of one university in a year of maximum reaction, four months after an assassination plot, and its propositions are drawn from books rather than from a survey of opinion. It shows what the doctrine's most committed institutional custodians were prepared to say in public at the doctrine's high-water mark, which is a narrower claim than the one a careless reading would take from it. Second, Argyll's conviction in December 1681 is characterised here as legally worthless, which is the settled modern view but is a judgment rather than a fact, and it rests on accounts written after his family's rehabilitation. Every load-bearing fact in this landscape is to be re-verified against a primary or standard source before it is built upon.

MODULE 1

Utterly Disproportioned

The floor of force — a king who won his only battle and then lost his army without fighting one, the largest foreign landing in England since 1066 described in its own manifesto as too small to conquer anything, and the two kingdoms where the same operation was paid for in tens of thousands of lives

A note on dates before anything else

England in 1688 was ten days behind the Continent. The English used the Julian calendar and the Dutch the Gregorian, so that a fleet which sailed from Hellevoetsluis on 11 November by Dutch reckoning arrived at Torbay on 5 November by English reckoning, and both dates are correct. Every date in this module is Old Style, English reckoning, because the English record is the one being read; where a modern account gives a date ten days later for the same event, that is usually the reason and not a disagreement about what happened. Two dates in what follows are genuinely disputed rather than merely doubled, and both are flagged where they occur.

The ten days matter for a reason beyond bookkeeping. A landing on the fifth of November put a Protestant army ashore in England on the anniversary of the Gunpowder Treason, which was one of the three state services in the Book of Common Prayer and was preached in every parish in the kingdom that morning. Whether the coincidence was contrived is not recoverable; that it was noticed at the time and used is not in doubt.

The sequence, and the position the framework does not have

The collection reads a founding by the order in which the two halves arrive.

A conqueror from outside lays the floor first and fits the legitimating story afterwards, because he does not need lawfulness to take a country and does need it at the moment his grants have to become his followers' sons' inheritances. William of Normandy fought at Hastings in October 1066 and was crowned in December, and no Norman claim of lawful succession — Edward's designation, Harold's oath, the papal banner — enters the surviving record until the 1070s, when spoil was being converted into heritable title. Floor, then robe.

A lawful apex runs it the other way, because his entire standing is lawfulness and the moment he acts outside the law every deed in his kingdom reopens, including his own.

Henry VIII spent six years legislating before a single person died under any of it. Robe, then floor.

The third position the collection has named is the armed insider who destroys the office he served, and it gets the worst of both: the conqueror's sequence at home, because the body that could have legislated first had to be purged to produce the required result, and no source of title afterwards, because the source had been abolished.

Now put William of Orange against those three.

He is not an insider; he is a foreign sovereign prince, Captain-General of a rival state, who arrived with that state's army and its money and its fleet. He is not simply an outsider either; he is married to the heir presumptive, he has a claim of his own through his mother, he was invited in writing by seven subjects of the king he came to remove, and English officers in the Anglo-Scots Brigade had been in Dutch pay for a century. And the sequence he actually ran is the *insider's* sequence, exactly and unmistakably.

The dates settle it. The Declaration was signed at The Hague on 10 October 1688 and an Additional Declaration on the 24th. Both were printed in bulk, in English, Dutch, French and German, and distributed in England by agents before the fleet sailed — the expedition carried thousands of copies as cargo. The fleet put to sea on 1 November. The army landed on 5 November. The robe was in English hands, being read aloud in English inns, before a single Dutch soldier stood on English ground.

An outsider who publishes his justification a month before he lands is not behaving like a conqueror. He is behaving like a claimant. And the reason he had to behave like one is the finding this module builds toward, so it is worth stating the question now rather than at the end: what was it about this particular invasion that made its own manifesto go to such lengths to deny that it was one?

What the floor could do when it was working: the summer of 1685

Before anything is said about how James II's floor failed, it has to be established that it worked, because the collection's hardest claim about change depends on the distinction and this case supplies an unusually clean test of it.

Within four months of the accession, both of the exiled oppositions rose, and both were destroyed.

Archibald Campbell, ninth Earl of Argyll — condemned in Edinburgh in December 1681 on the strength of the qualified explanation with which he had taken the Test, and escaped abroad — sailed from Holland in May 1685 with three ships and a few hundred men, expecting the Campbell country and the south-west Covenanters to rise. The government had moved first: his kinsmen were bonded or in custody, the

western shires were garrisoned, and the fleet took his ships. His force dispersed without a battle; he was taken at Inchinnan on 18 June and beheaded at Edinburgh on 30 June, on the same instrument that had killed his father.

James Scott, Duke of Monmouth, landed at Lyme in Dorset on 11 June with about eighty men and a few hundred pounds. The West Country came out for him in numbers — the standard estimates put his force at its height between four and seven thousand, weavers and clothworkers and farm labourers with scythes and fowling pieces and a very few muskets. The mayor of Lyme and a customs officer were called into the House of Commons two days later and described what they had seen: that the duke had come ashore with divers men, all well armed, and had set up his standard in the market place and exercised the men himself, and that on the road out of the town the two informants had met many people who said they were going to join them.

On the night of 6 July, at Sedgemoor near Bridgwater, that army attempted a night attack on the royal camp, was stopped by an unfordable drainage ditch it did not know was there, stood in the open under artillery until dawn, and was ridden down. The royal force was perhaps three thousand professionals under Feversham with Churchill commanding the horse. Casualty figures for the rebels are given between about a thousand and thirteen hundred killed and wounded with some hundreds to two and a half thousand taken; the royal loss is usually put at around two hundred killed and wounded. Monmouth was taken hiding in a ditch nine days later and beheaded on Tower Hill on 15 July.

Then the assizes. Between late August and late September a commission of five judges headed by Lord Chief Justice Jeffreys tried something over fourteen hundred prisoners in the western counties. The totals are contested in the way such totals always are — the range for those hanged runs from around two hundred to around three hundred and twenty, with the higher figures usually including those sentenced but not executed — and the figure for transportation to the West Indies is consistently given as eight to eight and a half hundred. Bodies and quartered remains were displayed across the counties that had risen. Whatever the exact count, the arithmetic of the operation is not in doubt: several hundred killed judicially, several hundred more sold into plantation labour, the profits of the sales distributed among courtiers.

Hold what this establishes, because it is the framework's claim in its cleanest available form. In the summer of 1685 a genuine popular rising, with a royal claimant at its head, real grievance behind it, and thousands of men willing to die, went up against an intact officered army of perhaps three thousand men and was annihilated inside a month. Popular anger in the West Country in 1685 was greater, better organised and more heavily supported than anything in England in 1688. The

difference between the two years is not the anger and not the numbers. It is that in 1685 the floor did not divide, and in 1688 it did.

James drew the obvious conclusion, and it is worth recording that it was obvious. He told his parliament in November 1685 that the militia was insufficient, that nothing but a good force of well-disciplined troops in constant pay could defend the kingdom, and that he had therefore increased the number. His Chancellor of the Exchequer put the arithmetic on the record: the standing forces stood at about fourteen or fifteen thousand men and had been about half so many before. In three years the English establishment would be roughly doubled again, with a summer camp of some thirteen thousand on Hounslow Heath outside London where the citizens came out to look at it. James had won his war, and he spent the winnings on an army.

The invitation, and the sentence in it that shows what its authors had learned

On 30 June 1688 — the day after the Seven Bishops were acquitted of seditious libel and three weeks after the birth of a Catholic prince converted a temporary reign into a dynasty — seven men put ciphers rather than signatures to a letter and sent it to The Hague by a rear-admiral travelling as a common sailor.

They were the Earl of Danby, the Earl of Devonshire, the Earl of Shrewsbury, Lord Lumley, Henry Compton the suspended Bishop of London, Edward Russell and Henry Sidney: a Tory and a Whig, a bishop, two men with army connections and two with navy connections. The selection was deliberate and the point of it was to look like a cross-section rather than a faction.

The operative passage reads:

> *the people are so generally dissatisfied with the present conduct of the Government in relation to their religion, liberties, and properties (all which have been greatly invaded), and they are in such expectation of their prospects being daily worse that your Highness may be assured there are nineteen parts of twenty of the people throughout the Kingdom who are desirous of a change; and who, we believe, would willingly contribute to it, if they had such a protection to countenance their rising, as would secure them from being destroyed.*

Read the last clause slowly, because it is the whole letter.

Nineteen parts of twenty is a rhetorical figure and nobody should treat it as a measurement. But the condition attached to it is not rhetoric at all. The people would contribute to a change *if they had such a protection to countenance their rising as would*

secure them from being destroyed — and the men writing that sentence were writing it three years after Sedgemoor and the assizes, in a country where the quartered remains of the last people who had risen without such protection had been nailed up in the market towns of five counties. They were not describing a hypothetical. They were describing exactly what happens to an unarmed population that moves against an intact officered army, they had watched it happen, and they were asking for the one thing that changes the arithmetic: a professional army already ashore.

The invitation is therefore a document written by insiders who had correctly understood the framework's hardest finding and were asking a foreign state to supply the missing variable. That is not a popular rising requesting a figurehead. It is a fracture inside the political nation contracting out the part of the job it could not do itself, and it tells you before anything else happens where the causal weight in this case is going to sit.

The largest landing since 1066, and its own account of its size

The force that sailed on 1 November 1688 is genuinely contested in its particulars and the disagreement should be given rather than averaged away.

The commonly cited figure for the fleet is 463 vessels, of which the fighting ships were a minority and the great bulk were transports, flyboats and victuallers; some accounts give around four hundred and others somewhat over five hundred, depending on what is counted as a ship. The soldiers are put at between about fourteen and sixteen thousand regulars in most modern accounts, comprising the Dutch Blue Guards, the Anglo-Scots Brigade, and Dutch, German, Swedish, Swiss and Huguenot units, with an artillery train; adding volunteers, English and Scottish exiles, servants and camp followers takes the land force to something above twenty thousand, and adding the seamen takes the total number of persons carried to something in the region of forty thousand. Every one of those figures is an estimate. What is not in dispute among any of the disputing accounts is the comparison they all reach for: this was a substantially larger seaborne force than the Spanish Armada of 1588, assembled in a small fraction of the time, and it was the largest foreign military landing in England since 1066.

Now set beside that the words the expedition brought with it.

The Declaration of 10 October is a long document — some five thousand words — and it is almost entirely an indictment. It recites the dispensing power and the packed judges, the Ecclesiastical Commission and the suspension of the Bishop of London, the expulsion of the Fellows of Magdalen, the closeting of officeholders, the surrender of the borough charters, the Catholic officers in the army, the state of Ireland, the trial of

the bishops, and the suspicion attaching to the birth of the Prince of Wales. It is written throughout in the grammar of the good subject and the evil counsellor: it is not the king who has done these things but "those Counsellors, who have now the Chief Credit with the King". The king himself is treated with elaborate care, his coronation oath cited approvingly, his succession acknowledged as having been received "without the least Opposition, though he made then open Profession of the Popish Religion".

And then it reaches the force, in a single sentence:

> *Therefore it is, that we have thought fit to go over to England, and to carry over with us a Force sufficient, by the Blessing of God, to defend us from the Violence of those evil Counsellors.*

Four hundred and sixty-three ships and fifteen thousand professional soldiers, described as a bodyguard.

The document then states what the expedition is for, and the statement is the narrowest thing in it: "this our Expedition is intended for no other Design, but to have a free and lawful Parliament assembled as soon as is possible". No claim to the crown is made anywhere. No deposition is proposed. The programme is procedural — the borough charters to be void, the displaced magistrates restored, London's ancient charter revived, the writs to go to the proper officers, and the two Houses then to sit in full freedom and decide. The Declaration also promises discipline on the march and — a sentence the study will have to return to — "as soon as the State of the Nation will admit of it, we promise, that we will send back all those Foreign Forces that we have brought along with us."

Then, on 24 October, something happened that produced the Additional Declaration, and it is the most revealing document of the whole founding. Word had come back that James's people were saying the obvious thing. The Additional Declaration names the charge in order to answer it:

> *They do also give out, that we intend to conquer and enslave the Nation. And therefore it is we have thought fit to add a few Words to our Declaration.*

The answer comes in two parts, and the first is the phrase this module is named for:

> *And as the Forces that we have brought along with us are utterly disproportioned to that wicked Design of conquering the Nation, if we were capable of intending it …*

That is the largest amphibious invasion force in the history of the North Sea, in a document printed by the men who assembled it, defending itself on the ground that it is too small to conquer anything.

Lay out the arithmetic and leave the sum. James's whole English establishment, after three years of expansion, stood somewhere near thirty to forty thousand men on paper across garrisons, guards and the field army, of whom around thirty thousand were ordered to concentrate and perhaps nineteen thousand actually assembled at Salisbury. Against a floor of that size, fifteen thousand professionals with a secure port and a fleet is not disproportionate to conquest. It is roughly what conquest of a fractured order costs, which is what the operation turned out to be.

But the second half of the Additional Declaration's answer is the half that matters, because it is not a claim about numbers at all. It is a claim about property:

> *For it is not to be imagined, that either those who have invited us, or those that are already come to assist us, can join in a wicked Attempt of Conquest, to make void their own lawful Titles to their Honours, Estates, and Interests.*

Read that as a lawyer would, because a lawyer wrote it.

The argument is not that conquest would be wrong. The argument is that conquest would be *self-destroying for the sponsors*, because in England every title to an honour, an estate or an interest descends from the crown, and a conquest reopens the crown, and reopening the crown reopens everything held of it. The Earl of Danby's estates, the Earl of Devonshire's estates, the Bishop of London's see, and the freehold of every peer riding in with the Prince, all rest ultimately on a source of title that a conqueror would have to replace. Six hundred and twenty-two years after a Norman duke established that no man in England owns land outright but holds it of the king, that doctrine reached out and told a Dutch army what it was permitted to call itself.

This is the module's principal finding and it is stated here so that the rest of the study can build on it. The collection already holds that a lawful apex cannot act as a conqueror without reopening every title in his realm including his own — that was the constraint that forced Henry VIII to legislate for six years before he took anything. What this case adds is that **the same constraint operates on a foreign invader whose sponsors are the target country's own landholders, and it operates through them.** William personally had nothing to lose by a conquest; his coalition had everything to lose by one, and his coalition was the reason the operation was possible. So the vocabulary was fixed before the fleet sailed. Not conquest but restoration; not a claim but a bodyguard; not a throne but a free parliament. And everything the settlement of 1689 subsequently had to do — the abdication, the vacancy, the drafting of a Bill of

Rights from which no title whatever descends — is downstream of a constraint that was already in the manifesto in October 1688.

The army that did not fight

James's floor was not defeated. It was subtracted.

He had the numbers. He had a fleet under Dartmouth that failed to intercept the crossing, partly through weather and partly through hesitation. He had a field army concentrating on Salisbury Plain that outnumbered the invaders by something close to two to one on most accounts. He had, on paper, everything Monmouth had faced and more.

What he did not have was confidence in any of it, and by the middle of November he had reason not to.

The defections began on 12 November, when Lord Cornbury — son of the Earl of Clarendon, and James's own nephew by marriage — attempted to take three regiments of horse over to William and succeeded in taking a fraction of them. Others followed in ones and twos over the next fortnight. James reached Salisbury on 19 November. On 20 November a royal cavalry patrol under Patrick Sarsfield ran into a detachment of the Scots Brigade at Wincanton in Somerset; the numbers engaged were a few dozen on each side and the dead numbered somewhere between a dozen and twenty. That was the first of the two armed clashes of the English campaign.

On 23 November, suffering from severe nosebleeds and unable to get reliable information about William's movements, James accepted his commanders' advice to withdraw towards London — which, as his own officers understood, was a decision that could not be reversed. On the night of 24 November, John Churchill, the Duke of Grafton and Lord Berkeley went over. Prince George of Denmark, the king's son-in-law, followed. On 26 November James returned to London to be told that his daughter Anne had gone too. (Some modern accounts date the Churchill defection to 3 December; that is the Gregorian equivalent of 23 November, and the discrepancy is calendrical rather than substantive.)

The numbers of men who actually changed sides were small. The effect was not, and the reason is the one the framework would predict: what a defection destroys is not manpower but the credibility of command. An army in which no colonel can be sure of his neighbour is not an army that can be marched at anybody, and every man in it knows this simultaneously. It did not help that the most popular song in England that autumn was a piece of anti-Irish doggerel called *Lilliburlero*, printed for the first time in October and, on the standard accounts, whistled in the ranks of the king's own regiments.

The second and last clash came at Reading on 9 December, when something under three hundred Dutch cavalry attacked around six hundred Irish dragoons holding the town and drove them out; the dead are usually put at around fifty, and some accounts date the action to the 7th. By 10 December, on the National Army Museum's account, some four thousand men remained of the thirty thousand ordered to concentrate.

Two skirmishes. Perhaps sixty or seventy men killed in the whole of England.

This is elite fracture in its textbook form, and the comparison the collection should draw is not with 1066 but with 1659. Thirty years earlier the New Model Army had fractured against itself, Monck had marched south from Coldstream, and an order had been dismantled without a battle because the men holding the floor would not fight for the men who owed them money. The difference in 1688 is that the fracture had somewhere to go. A professional army was already ashore, funded by a foreign treasury, with an alternative employer at its head. An elite that fractures with no external force present must negotiate a settlement among the pieces, which is what 1660 was. An elite that fractures with an invited army in the country hands the whole apparatus over in a fortnight.

And note precisely what was lost. James retained his regiments. What emptied was the *credible expectation* that they would be used, and the writing-off of a reach still physically possessed is a distinct and dateable event: it happened on 23 November, on Salisbury Plain, in a decision to withdraw taken by a king who still had twice his enemy's numbers and no longer believed they were his.

The flight, which is the founding's most important act

On 9 December the queen and the infant Prince of Wales left for France. On the night of 10–11 December the king followed, and on his way out he did three things that show exactly what he understood about the machinery he was leaving.

He ordered Feversham to disband the army. He burned the writs that had been prepared for the summoning of a parliament. And he dropped the Great Seal of England into the Thames.

None of these was petulance. They were the acts of a man who had grasped that his enemies' entire programme was procedural — a free and lawful parliament — and who was removing the instruments by which a lawful parliament could be summoned. No writ runs without the seal. Under the constitution as it then stood, nobody but the king could summon a parliament, and the king was removing both himself and the seal from the kingdom on the same night. It was sabotage of the most precisely targeted kind, and it very nearly worked as intended, in that it forced the assembly which

eventually met to be summoned by a route that everyone concerned knew was irregular.

Then the operation nearly failed for the opposite reason. On 11 December James was recognised and detained at Faversham in Kent by local fishermen who were hunting fleeing Catholics and had no idea whom they had caught. He was brought back to London on 16 December and was cheered in the streets. He slept at Whitehall, attempted to resume business, and presided over a meeting of the Privy Council. Dutch troops relieved the English guards at Whitehall. On 18 December, at William's request and under a Dutch escort, he was moved to Rochester. On 23 December he left for France.

That second departure is the single most consequential act of the entire founding, and it was an act of the floor: specifically, an act of force deliberately not applied. The guard at Rochester was posted so as to leave the back of the house toward the river unwatched. Contemporaries understood the arrangement and so did James, who took it.

The reason is not obscure and the collection has already established it in the previous study. A king in custody is a problem with only bad solutions. He must be tried, or imprisoned, or deposed by a formal act — and each of those is a door England had opened once, in January 1649, and had spent thirty-nine years and an annual liturgy resolving never to open again. A king who has left the kingdom of his own motion, having first destroyed the seal and disbanded the army, can be *deemed* to have done something, and the deeming can be done by an assembly rather than a court. The Cromwell study found that what England drew from 1649 was not "a king may be tried" but "never that again — do it this other way", and predicted that 1688 would be arranged so as to avoid trying anybody. The prediction is confirmed here, and confirmed at the level of physical arrangements rather than of drafting: before any fiction could be adopted at Westminster in January, somebody had to make sure in December that there was nobody in the Tower to try.

A prisoner must be dealt with. A fugitive can be construed. The construing belongs to the next module. The unlocked door belongs to this one.

One further consequence of the burnt writs deserves recording, because it is the precedent library operating again and operating from an unexpected shelf. With no seal and no king, the assembly that met on 22 January 1689 had to be summoned somehow, and the Commons' own record of the December meetings sets out how the difficulty was resolved. William called together the surviving members of Charles II's parliaments and the City authorities at St James's on 26 December; they moved themselves to the Commons chamber at Westminster, elected Henry Powle to the

chair, debated first what authority they had to assemble at all, and resolved that the Prince's request was warrant enough. And the precedent produced to justify the whole procedure was this: that toward the end of 1659 General Monck and the nobility and gentry working for the king's restoration had issued summonses for a convention in the name of the Keepers of the Liberties of England, that this had been done by unqualified persons without the formal consent of the people, and that the restored king had afterwards been so well satisfied with their proceedings that it was enacted that the Lords and Commons then sitting were the two Houses of Parliament, notwithstanding any want of the king's writs or any other defect whatsoever.

So the assembly that made the settlement of 1689 was summoned on the precedent of the assembly that had undone the republic, which had itself been summoned without writs by a general marching south from Scotland. The regicides' successors had left behind a procedure for constituting a parliament when there was no king to call one, England had spent thirty years pretending the whole period had not occurred, and in the last week of 1688 the procedure was taken down off the shelf and used to install a Dutch prince. A failed order leaves prohibitions, and this collection has said so at length. It also, occasionally, leaves a form of words that works.

The two kingdoms where it was not bloodless

Everything above happened in England, where the founding cost something under a hundred lives. The same operation was carried out in Scotland and Ireland, and the arithmetic there differs by three orders of magnitude.

Scotland. A Convention of Estates met at Edinburgh in March 1689 and, unlike its English counterpart, said plainly what had happened: that James had forfeited the crown. John Graham of Claverhouse, Viscount Dundee — the officer whose conduct in the south-west during the Killing Time had earned him the name Bluidy Clavers — rode out of Edinburgh, raised the Highland clans, and on 27 July 1689 met a government army under Hugh Mackay in the pass of Killiecrankie. The Highland charge broke Mackay's line in a few minutes and the government army was routed. It was a Jacobite victory that settled nothing: about a third of the Highland force was killed in the charge, a figure usually given as around six hundred, and Dundee himself was shot at the moment of victory. The rising attacked Dunkeld on 21 August, was held off by a single newly raised regiment fighting from the houses and the cathedral precinct, and dispersed; a final gathering was broken at Cromdale on 1 May 1690. Estimates for the whole rising run to something like fifteen hundred to two thousand Jacobite dead and two thousand to twenty-five hundred on the government side, and every one of those numbers is an estimate.

Ireland. Here the founding was not a campaign but a war, and it was the war the Irish landholding question had been waiting for since 1641.

Tyrconnell held Ireland for James. In December 1688 thirteen apprentices shut the gates of Derry against a Jacobite garrison; James landed at Kinsale in March 1689 with French money and French officers and held a parliament in Dublin that voted to repeal the Restoration land settlement. From April to July 1689 Derry was besieged for a hundred and five days. The figure for deaths inside the walls is one of the most contested numbers in Irish history — it depends entirely on whether one counts only the garrison, or the garrison and the refugees packed in behind it, and on which contemporary account is believed. Figures from around four thousand to around fifteen thousand appear in the reputable literature, most of them dead of disease and starvation rather than of shot. The honest statement is that several thousand people died inside one city and that the true figure is not recoverable.

Then Newtownbutler in July 1689, where Williamite claims of two thousand Jacobite dead are reduced by modern reconstruction from the regimental rolls to something like eight or nine hundred. Schomberg's landing and a winter camp at Dundalk that killed thousands of his own men by disease. The Boyne on 1 July 1690 — the largest engagement ever fought in Ireland, some fifty to sixty thousand men present, and casualties that were light by the standards of the period, usually given as around fifteen hundred to two thousand dead in total, about two-thirds of them Jacobite. Athlone. And then Aughrim, on 12 July 1691, where a Jacobite army that had very nearly won lost its commander to a cannonball and disintegrated: four thousand killed on the standard count with four thousand more missing, and totals of over seven thousand dead in some accounts. It is the bloodiest single day in Irish history. Galway surrendered; Limerick capitulated in October 1691.

Set the three columns beside each other and do not soften the result.

In England the founding cost two skirmishes and perhaps sixty or seventy lives, and produced a word — *bloodless* — that was then applied to the whole operation and has been applied to it ever since. In Scotland it cost several thousand and left a Highland question that would take another fifty-five years and Culloden to close. In Ireland it cost tens of thousands dead of shot and disease and hunger, destroyed a landholding class, and produced a settlement that was still standing in the fields two centuries later.

The Cromwell study found that a war fought for possession of a country spares its metabolism, because the winner wants it working, while a war fought for removal calls the note; and that England had twice spared its own harvests through a revolution and sent the bill to the same island. This is the third time in a hundred and fifty years. The English column of this founding is genuinely, remarkably cheap. The cheapness is a

fact about England. It is not a fact about the founding, and a study that reports the English figure as the figure has not been counting.

Reading the floor against the framework

The contribution is a fourth founding position and the constraint that defines it.

The invited outsider. He arrives from outside with an army raised and paid by a foreign state, which gives him the conqueror's capacity. But he arrives at the request of insiders whose own titles descend from the order he is entering, which denies him the conqueror's vocabulary — and therefore, in the end, the conqueror's freedom. So he runs the *insider's* sequence: robe first, printed and distributed before the floor lands; force second and as little of it as possible; and a programme stated in purely procedural terms, because any substantive claim would have to be a claim about title, and a claim about title is the one thing his sponsors cannot allow him to make.

The mechanism underneath this is one the collection already owns, transferred one step sideways. The Henrician case established that a lawful apex cannot act as a conqueror without reopening every deed in his realm including his own, and that this constraint — not squeamishness, not piety — is what forced six years of statute before a single seizure. Here the identical constraint operates on a man who has no English title to lose, because it operates through the people who invited him. Their titles are the hostage. And the drafters said so, in print, in the plainest possible terms, five weeks before the landing: it cannot be imagined that those who invited us, or those come to assist us, would join in an attempt of conquest, *to make void their own lawful Titles to their Honours, Estates, and Interests.*

Stated as a rule for the card: **where an invasion is sponsored by the target order's own propertied class, the sponsors' titles fix the invader's vocabulary, because a conquest voids the sponsors along with the incumbent. Expect such an invasion to be described as a restoration, expect its manifesto to disclaim conquest in property terms rather than moral ones, and expect the settlement that follows to be drafted so that no title derives from the landing.** The test of the rule is drafting, not sincerity: it predicts what the documents will have to say regardless of what anybody privately intended, and it can be checked against any case where an outside force is invited in by domestic landholders.

Three smaller findings attach, and they compound earlier work rather than claiming fresh revisions.

The first is a control result the collection should record. This case runs the same country twice within four years. In 1685 a popular rising with a claimant, thousands of men and real grievance met an intact officered army of three thousand and was

destroyed inside a month, with several hundred hanged and eight hundred sold to the plantations. In 1688 the same crown, with an army four or five times larger, fell in six weeks at a cost of about seventy lives. Nothing about popular sentiment explains the difference; by any measure the West Country in 1685 was angrier and more mobilised than England in 1688. What differed is that the floor divided. The people were present at the second opening as crowd and as rioters and as the fishermen who caught the king by accident, and they were the proximate agent of nothing.

The second refines the account of how a floor empties. James's regiments were not destroyed and were barely engaged. What ended on 23 November on Salisbury Plain was the credible expectation that they would be used — a king with twice his opponent's numbers ordering a withdrawal because he no longer believed the men were his. That is a dateable event, and it is worth adding that elite fracture behaves differently depending on whether an alternative employer is present. A fracture with no external force in the country obliges the pieces to negotiate, which produces 1660. A fracture with an invited professional army already ashore produces a transfer, because every fragment has somewhere to go.

And the third is the one the next module rests on. The most important use of force in this founding was a use withheld: the guard at Rochester on the night of 23 December, posted so that the king could get out. A deposed apex in custody constrains his successors to a court, a charge and a sentence, which is the road England had sworn never to travel again. A deposed apex who has left can be construed. The floor did not merely permit the fiction that followed; it manufactured the physical conditions the fiction required, and it did so a month before anybody at Westminster had to draft a word.

A note on sources. Quoted exactly from public-domain primary texts: the Declaration of His Highness William Henry, Prince of Orange, of 10 October 1688, at "those Counsellors, who have now the Chief Credit with the King", at "without the least Opposition, though he made then open Profession of the Popish Religion", at "we have thought fit to go over to England, and to carry over with us a Force sufficient, by the Blessing of God, to defend us from the Violence of those evil Counsellors", at "this our Expedition is intended for no other Design, but to have a free and lawful Parliament assembled as soon as is possible", and at the promise to "send back all those Foreign Forces that we have brought along with us"; the Additional Declaration of 24 October 1688, at "They do also give out, that we intend to conquer and enslave the Nation", at "the Forces that we have brought along with us are utterly disproportioned to that wicked Design of conquering the Nation, if we were capable of intending it", and at "to make void their own lawful Titles to their Honours, Estates, and Interests"

— all four from the text of both Declarations as entered in the Journal of the House of Commons, volume 10, which reproduces them in full. The account of the meeting at St James's on 26 December 1688, the removal to the Commons chamber, the election of Powle to the chair, the debate on what authority the assembly had, and the Monck precedent of 1659 with its recital that the Lords and Commons then sitting were the two Houses of Parliament "notwithstanding any Want of the King's Writs, or any other Defect whatsoever", are from the History and Proceedings of the House of Commons, volume 2 (London, 1742), with the parallel record in the Commons Journal. The Invitation of 30 June 1688 is quoted at "the people are so generally dissatisfied" through "secure them from being destroyed" from the transcript published by The National Archives from SP 8/1/224; minor variants of spelling and of the phrase's tail appear across reproductions and the National Archives transcript has been preferred. The account of Monmouth's landing given at the bar of the House of Commons on 13 June 1685 by the Mayor of Lyme and a customs officer, and the Chancellor of the Exchequer Sir John Ernley's statement in the Commons in November 1685 that the standing forces were "about 14 or 15000 Men, and they were about half so many before", together with James II's speech of 9 November 1685 on the insufficiency of the militia, are from the same 1742 volume.

Paraphrased and credited to modern scholarship or drawn from the standard reference literature: the composition and dissemination of the Declaration before the landing; the naval and military narrative of the crossing and campaign; the defections of Cornbury, Churchill, Grafton, Berkeley, Prince George and Princess Anne; the actions at Wincanton and Reading; James's flight, the destruction of the writs, the Great Seal, the detention at Faversham, the return to London, the removal to Rochester and the departure of 23 December; the Scottish rising of 1689 and its battles; and the Williamite war in Ireland.

Contested figures are given as ranges throughout and several are worse than contested. The size of William's fleet is conventionally given as 463 vessels with figures from about four hundred to over five hundred in circulation depending on classification; the land force is given at roughly fourteen to sixteen thousand regulars, above twenty thousand including volunteers and followers, and up to about forty thousand persons carried in total including seamen — these are estimates and the specialist literature does not agree. Monmouth's strength, the Sedgemoor casualties and the Bloody Assizes totals are all disputed: executions are variously given from about two hundred to about three hundred and twenty, the higher figures generally reflecting sentences rather than executions, and transportations are consistently given at eight to eight and a half hundred. The strength of James's army is given loosely because the

paper establishment, the concentration ordered and the force actually assembled are three different numbers; the figure of four thousand remaining by 10 December follows the National Army Museum and should be re-verified. Killiecrankie's Jacobite loss of about a third of the force, commonly rendered as six hundred, and the government loss, are estimates from partisan accounts. The deaths inside Derry during the siege are the least secure figure in this module, running from about four thousand to about fifteen thousand across reputable sources according to whether refugees are counted, and no point within that range is asserted here. The Boyne is given at roughly fifteen hundred to two thousand dead in total and Aughrim at four thousand killed with four thousand missing on the standard count, over seven thousand dead in others.

Three things that would embarrass the argument are flagged. First, the dating of the Churchill defection differs by ten days between accounts and this module treats the difference as calendrical; if any account intends a genuinely different date, the reconstruction here is wrong on that point. The date of the Reading action is given as 9 December with 7 December appearing in several accounts, and the discrepancy is not calendrical and is not resolved. Second, the claim that the guard at Rochester was deliberately arranged to permit James's escape is the settled reading of the standard constitutional histories and is consistent with William's evident preference, but it rests on inference and on memoir evidence rather than on an order, and no document instructing the guard to look away has been produced here. Third, the motto reported on William's standard — the Protestant religion and the liberties of England, with the Orange *Je maintiendray* — is consistently reported but is not quoted here from a documented original, and has therefore been left out of the text. Every load-bearing fact in this module is to be re-verified against a primary or standard source before it is built upon.

MODULE 2

Not a Word Known to the Common Law

The settlement — a revolution that moved not one acre in England, an office conveyed by the same instrument its conveyancers used for their own estates, a fiction chosen precisely because English law had no word for what was being done, and a million Irish acres that paid an army's arrears

What there was to divide

Every settlement this collection has examined has been a division of land, and the module that examines it has always begun by asking who got which acres.

In 1066 the entire landholding class of a kingdom was replaced man by man, each Norman seated in the exact legal position of a named dead Englishman. Between 1536 and 1540 a lawful king took something approaching a quarter of England from living lawful owners by statute and sold it at twenty years' purchase to several thousand families in every county. Between 1649 and 1653 crown lands, bishops' lands, deans' and chapters' lands, the estates of royalists and the greater part of the land of Ireland were confiscated and distributed, in a redistribution larger and faster than the dissolution.

Between 1688 and 1701 the crown of England changed hands, the constitution was rewritten, and in England not one acre changed owner as a consequence.

There were no confiscations. There was no attainder. There was no court of claims, no survey, no register of forfeited estates, no commission for the sale of anything. The men who had been James's ministers were dismissed and a few were imprisoned; Jeffreys died in the Tower in April 1689, and the rest went home to their own houses and kept them. The Catholic gentry of England, who were the natural losers, lost offices they had held for two years and kept the land they had held for centuries. The borough charters went back to the corporations that had surrendered them; the fellows of Magdalen went back to Magdalen. The direction of travel in England was restoration of possession, not transfer of it.

This is not a minor observation and it is not merely a curiosity of scale. It is the first thing the module has to explain, because a settlement is what binds an order's beneficiaries to it — the framework's whole account of durability runs on the proposition that a man defending his own holding defends the arrangement that makes

the holding his — and a settlement that hands out no holdings has, on the face of it, manufactured nobody.

So the question becomes: what *was* divided?

Four things, and they belong in different places. The crown itself was conveyed, and the instrument that conveyed it is this module's subject. Office and honour were distributed among the men who had done the work, in the ordinary way and at the ordinary rate. A religious settlement drew a new line between who might worship and who might govern. And the fiscal terms on which the new king would be permitted to be king were fixed — which is the part of the settlement that actually did the binding, and which belongs to the extraction module rather than this one.

And in Ireland, where a settlement means land and always has, over a million acres were taken.

What the instrument found: a descent, not a thing

The framework requires that a settlement's instrument be read against what it found — whether the wealth it moved was already a thing that could be handed over, or a relation between persons that had first to be converted into one. Monastic land turned out to be neither, and the Henrician study had to name a third form: a perpetual endowment charged with a service, which could not be moved without destroying the belief that created it.

Apply the same question to the crown of England as it stood on 5 November 1688.

It was not a thing anybody could convey, because there was nobody standing outside it with the power to convey it. It was a descent: an inheritance that went where blood took it, by operation of law, at the instant of a death, with no interval and no discretion. The maxim every lawyer in the Convention knew was that the king never dies — the crown passes in the same moment it falls vacant, so that there is never a gap. The Scottish parliament had put the doctrine into statute in August 1681, asserting the right of succession to the imperial crown by lineal descent from a royal power derived from God Almighty alone. The University of Oxford had condemned as false, seditious and impious, in July 1683, the proposition that birthright and proximity of blood give no title to rule and that it is lawful to preclude the next heir from his right of succession.

That is not a relation between persons in the sense the framework has met before, and it is certainly not a transferable asset. It is closer to a fact about the world: the crown descends the way water runs downhill, and no instrument stands above it.

Which means the conversion this settlement had to perform was of a kind the collection has not previously catalogued. It had to turn an operation of law into an act

of parliament — to take a thing that happened by itself and make it a thing that was done, by named people, in writing, on a stated day. Everything that follows in this module is that conversion being carried out by men who understood exactly how dangerous it was and spent three weeks arguing about a single word in order to make it look like nothing had happened at all.

Three weeks on one word

The Convention met on 22 January 1689 and chose Henry Powle as its Speaker. William's letter to it, read the same day, put the pressure on plainly: the states of the United Provinces, "by whom I have been enabled to rescue this Nation", could not much longer be deprived of the service of their troops, and delay was the second most dangerous thing after division. James, from Saint-Germain, sent a letter of his own; the Commons, understanding whom it came from, refused to open it.

On 28 January the House went into committee and debated the state of the nation. Several courses were canvassed and they are worth naming, because the outcome was not obvious in the room. Dolben proposed that James's departure amounted in law to a *demise* — the technical term for a king's death — which would have made the crown descend, automatically, to the next heir. Others objected precisely because a demise implies a descent, and a descent takes you straight to the infant Prince of Wales or, if the child is set aside, to Mary; either way it takes you to a person, not to a decision. Finch proposed a regency during James's life, which was the honest Tory answer and had the merit of leaving the doctrine of hereditary right untouched. Musgrave said the thing that everyone was avoiding: that to vote the throne vacant "would be actually to depose the King", and asked the lawyers whether that could legally be done. Fanshaw asked for an adjournment on the ground that the matter was too important to be decided in haste, and could not find a seconder.

The committee then produced, without a division, the resolution the whole settlement rests on:

> *Resolved, That King James the Second, having endeavour'd to subvert the Constitution of the Kingdom, by breaking the Original Contract between King and People; and by the Advice of Jesuits, and other wicked Persons, having violated the Fundamental Laws; and withdrawn himself out of the Kingdom, hath Abdicated the Government, and that the Throne is thereby become Vacant.*

Two days later they added a second resolution, in the grammar the regicides had used and the Restoration had refused: that it had been *found by experience* to be inconsistent with this Protestant kingdom to be governed by a Popish prince.

The Lords agreed to almost all of it — to the subversion, to the breach of the original contract, to the violation of the fundamental laws, to the withdrawal — and sent back two amendments:

> *L. 8. Instead of the Word abdicated, read deserted.*
> *L. 9. Leave out these Words, And that the Throne is thereby vacant.*

What followed was a conference and then a free conference between the two Houses, held in the Painted Chamber over two days, and it was recorded. It is the most valuable document in this study, because it is a legal fiction being manufactured in public by the men who needed it, with the reasons stated out loud.

What the word had to do

The Lords' objections, delivered by the Earl of Nottingham, were two and they were good ones.

The first was philological and is the source of this module's title. The Lords, he said, "do not find, that the Word *abdicated* is a Word known to the common Law of England, and the Lords hope the Commons will agree to make use of such Words only, whereof the meaning may be understood according to Law, and not of such as will be liable to doubtful Interpretations." And in its ordinary civil-law sense, abdication is "a voluntary express Act of Renunciation; which is not in this Case".

The second was the whole quarrel. The Lords were willing to secure the nation against James's return; what they would not concede was "that there was either such an Abdication by him, or such a Vacancy in the Throne, as that the Crown was thereby become elective". Their reasons: "Because, by the Constitution of the Government, the Monarchy is hereditary, and not elective", and "Because no Act of the King alone can bar, or destroy, the Right of his Heirs to the Crown."

The Commons' managers were the best lawyers in England — Somers, Holt, Treby, Maynard, Pollexfen — and they went to work.

Somers's answer to the philological point is a small masterpiece of advocacy and worth following, because of what it reveals about where a robe comes from when the local materials will not serve. Standing in the Painted Chamber, he took the House of Lords through Grotius on the law of nature, Calvin's *Lexicon Juridicum*, Brissonius on the meanings of words, Budaeus's commentaries, and Bartolus on the eighth law of the fifty-eighth title of the eleventh book of the Code, in order to establish that *abdicare* covers renunciation by conduct as well as by express words: that a man may abdicate a thing "by doing such Acts as are inconsistent with the holding or retaining of the

thing". And he turned the objection round: if the trouble with *abdicated* is that it is unknown to the common law, then *deserted* is equally unknown, and the Lords' reason "hath the same force against your own Amendment". Then he made the difference do the work: in both the civil and canon law, *deserere* means a temporary quitting which leaves the party at liberty to return, while *derelinquere* means a leaving with no right of return — and the Lords had themselves said they wished to secure the nation against James's return, which they would not in justice do if they thought he had a right to come back.

Holt supplied the underlying theory in one sentence: "the Government and Magistracy is under a Trust, and any acting contrary to that Trust is a renouncing of the Trust, though it be not a renouncing by formal Deed."

Nottingham's reply went straight at the pivot: "Whether you mean by *Abdication*, a Renouncing for himself, or for himself and his Heirs? If you mean only *Abdication* for himself, it will have a different Influence upon the Debate ... for then, *How can the Throne be vacant*?" And the Bishop of Ely made the Tory case as well as it can be made, distinguishing a renunciation of the exercise of a right from a renunciation of the right, and observing that if the second is meant then hereditary succession is cut off — "which I believe is not intended by the Commons".

It was, of course, exactly what was intended, and the Commons would not say so.

Pembroke, for the Lords, offered the way out that the Tories wanted: treat it as a demise, so that "the King is dead in Law by this Abdication or Desertion of the Government, and that the next Heir is to take by Descent." Maynard, aged eighty-five and the most senior lawyer in England, closed that door with a maxim: "no Man can pretend to be King James's Heir while he is living: *Nemo est haeres viventis*." Nobody is the heir of a living man. If James is alive, no heir can take by descent; if no heir can take by descent, the throne is either full of James or empty; and if it is full of James, everything done since December was treason.

Which is precisely what Sir Robert Howard then said out loud, and it is the most important sentence in the record. Turning to the peers, he asked whether, had there been a known heir in quiet possession, their Lordships would have assembled without his summons, or advised the Prince of Orange to take the administration upon him — and answered his own question:

> *I doubt you have been (pardon me for saying it) all guilty of High Treason, by the Laws of England, if a known Successor were in possession of the Throne, as he must be if the Throne were not Vacant.*

There is the arithmetic of the fiction, stated by its author, in the presence of the men it was designed to protect. The vacancy was not primarily a theory of government. It was an indemnity. Every peer who had signed the December address, every gentleman who had ridden in to Exeter, every officer who had changed sides at Salisbury, was a traitor under the law of England as it then stood unless the throne had been empty at the moment he acted. Declaring it vacant made them all retrospectively lawful. Declaring it full — of anyone at all — made them all liable.

And Howard supplied the second half a moment later, having given up on words entirely:

> *Use what words you will, fill up, nominate, or elect, it is the thing we are to take care of, and it is high time it were done.*

The Lords lost. On the first amendment the question was put and passed in the negative without a division; on the second, to leave out the vacancy, the House divided 151 to 282. The Lords gave way on 6 February. On 13 February the Declaration of Rights was read to William and Mary in the Banqueting House at Whitehall and the crown was tendered to them.

The seventh fiction

The collection now holds a catalogue of the devices by which a taking is made lawful, and each of them does a different job. Declare the land vacant, and you have dispossession. Declare that the grantee already owned what you are giving him, and you have an elite bound by a gift he does not experience as a gift. Declare a collective holding partible, and you have manufactured a market where none existed. Seat a follower in the legal position of a named dead man, and you have replaced an entire class without redrawing a boundary. Manufacture grounds and have the holder convey, and you have a surrender that a lawful sovereign can perform against living lawful owners.

Abdication is a seventh, and it is not a variant of any of them.

Its object is not land but an office. Its problem is that the holder is alive, at liberty, in France, and claiming — which forecloses vacancy in the ordinary sense, because you cannot say nobody was there when everybody knows exactly who was and where he has gone. And its job is precise: **to transfer an office without a transferor and without a forfeiture.**

Take those two exclusions in turn, because they are what generate the whole shape of the thing.

Not a transferor, because there is nobody with standing to convey. A king cannot be made to sign; a court cannot be convened without conceding that a court can try a king, which is the road England had sworn never to travel again; a conquest cannot be admitted, because a conquest reopens every title in the realm including those of the men who invited the conqueror in.

And not a forfeiture, because forfeiture concedes that the crown is held on terms. If James forfeited, then the crown is a conditional estate, and a conditional estate has a grantor who can enforce the condition, and the only candidate for that role is the body doing the declaring. That is the elective monarchy the Lords spent a fortnight refusing, and it is what the Commons managers repeatedly and carefully denied intending.

So the emptying has to be attributed to the loser's own act, and the act has to be one he can be said to have performed without meaning to. Hence a construction from conduct rather than from words: an abdication proved not by a deed of renunciation but by doing things inconsistent with the retaining of the thing. Hence the active verb with James as its subject — *hath abdicated* — so that the sentence contains no other agent at all. Nobody took the crown. It was put down.

The diagnostic that follows is usable elsewhere. Where an order transfers an office whose holder is alive and claiming, and cannot afford either a trial or an admission of conquest, expect the instrument to be drafted so that the loser is the only person in it who does anything, and expect the operative verb to describe an act of his own. **The grammar carries the fiction. The subject of the sentence is where the fiction lives.**

And there is a further property here that the collection should record, because it is counter-intuitive and it is the reason this particular word was chosen over the several available alternatives. Nottingham's objection was that *abdicated* was not known to the common law. He was right, and that was its qualification. A word with a settled English legal meaning would have dragged its settled English legal consequences behind it. *Deposed* implied a depositor. *Demise* implied a descent to a named heir. *Forfeited* implied a grantor. *Deserted* implied a right of return. *Abdicated* implied, in English law, nothing whatever, because English law had never used it — which meant it could be given precisely the meaning the majority needed, by a barrister quoting Grotius on his feet, and no more.

Stated for the card: **a settlement fiction is often chosen for its emptiness rather than its content. Where the available legal vocabulary all carries consequences the drafters cannot control, expect them to import a term from outside the system — a foreign word, a civilian word, a word of art from another discipline — precisely because it arrives with no history and can therefore be defined to fit.** The

elaboration of the definition, in this case a parade of five continental jurists in one speech, is the measure of how much work the emptiness had to do.

The conveyance, drafted as a family settlement

Having emptied the throne, the Convention had to fill it, and the drafting of that clause is the module's second finding.

The Declaration, and then the Bill of Rights which enacted it in December 1689, disposes of the crown in these words:

> *That William and Mary Prince and Princesse of Orange be and be declared King and Queene of England France and Ireland and the Dominions thereunto belonging to hold the Crowne and Royall Dignity of the said Kingdomes and Dominions to them the said Prince and Princesse dureing their Lives and the Life of the Survivour of them And that the sole and full Exercise of the Regall Power be onely in and executed by the said Prince of Orange in the Names of the said Prince and Princesse dureing their joynt Lives And after their Deceases the said Crowne and Royall Dignitie of the said Kingdoms and Dominions to be to the Heires of the Body of the said Princesse And for default of such Issue to the Princesse Anne of Denmarke and the Heires of her Body And for default of such Issue to the Heires of the Body of the said Prince of Orange.*

Read that as a conveyancer would, because a conveyancer wrote it.

To hold to them during their lives and the life of the survivor of them; and after their deceases to the heirs of the body of the said Princess; and for default of such issue to the Princess Anne and the heirs of her body; and for default of such issue to the heirs of the body of the said Prince. That is a strict settlement. It is the ordinary instrument by which an English landed family tied up an estate: a life interest, then a series of entails in remainder, each cutting in on failure of the one before. Every man in the Convention with a country house had one in his muniment room, and most of them had negotiated one on marrying.

The crown of England was conveyed in the form used for conveying Wiltshire.

And that is the conversion this settlement performed, stated in the plainest way available. Before February 1689 the crown descended; after it, the crown was limited. Before, it went where blood took it and no statute could divert it, and Oxford had condemned the contrary proposition as blasphemous. After, it went where an instrument said it went, and the instrument named four successive interests in order, of which the last — the heirs of the body of William by any subsequent marriage — would have carried the crown of England into a line with no Stuart blood in it at all.

The Convention did not say it had done this. It said James had abdicated. Whether the men who drafted the limitation understood that they had converted a descent into a settlement, or whether they thought of themselves as merely identifying who was next, is not recoverable from the record and this study will not guess. What is recoverable is that twelve years later, when Anne's last surviving child died, the same operation was performed again without argument: the Act of Settlement of 1701 simply named the Electress Sophia and the heirs of her body, passing over some fifty persons with better hereditary claims, and nobody thought it necessary to prove that anyone had abdicated anything. The second performance is the evidence that the first had taken.

One further clause in that passage is the actual deal between the parties and should not be read past. *The sole and full exercise of the regal power be only in and executed by the said Prince of Orange in the names of the said Prince and Princess.* Mary was the heir; William was not. Mary would not take the crown alone and rule over her husband; William, on the reports of those present, would not accept a regency or a life interest in his wife's right. The settlement is a joint title with a sole executive, which is a legal impossibility tidily drafted, and it exists because two people in one marriage each had something the other needed. It is also the clearest statement in the whole document of who had actually won: the Dutch Stadtholder got the exercise, and with it the fleet, the army and the revenue of England for the war against France, which was what the United Provinces had paid for.

The consideration, and why it was not recited

The framework requires that a settlement's consideration be named: what the grantee owed in return, and in particular whether it included armed service.

In this case the consideration was deliberately left out, and the leaving out was the most carefully managed act of the entire proceeding.

The Declaration of Rights was read aloud to William and Mary in the Banqueting House on 13 February, immediately before the crown was tendered, and it was not made a condition of the offer. The text says so in its own way. Having recited the grievances and asserted the rights, it comes to the disposal in these words: "Having therefore an entire confidence that his said Highness the prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights which they have here asserted ..."

An entire confidence. Not a condition, not a covenant, not a proviso, not a term. A statement about the state of mind of the grantors.

The reason is the same reason that produced *abdicated*. A crown granted upon condition is a crown held on terms; a crown held on terms has a grantor entitled to re-enter on breach; and a grantor entitled to re-enter is a body with the power to unmake a king, which is the elective monarchy the Lords had refused and the Commons had denied intending. So the terms were recited as a description of what the law already was — the Declaration asserts and vindicates ancient rights rather than creating new ones — and the confidence that they would be observed was recited as a feeling.

Then, in December 1689, the Declaration was re-enacted as a statute, with the succession clauses attached, and the terms became law. Ten months after the conveyance, and as a separate transaction.

Stated for the card: **where a settlement's consideration is performed after the conveyance and recited as a separate instrument, the grantee's title does not depend on his performing it.** That is a real weakness and it should be named as one. William's title in law did not rest on his keeping the Declaration; there was no clause of re-entry, no forfeiture, no mechanism whatever. If the settlement of 1689 bound him — and it did — it was bound by something else, and this module can only say what that something else was not. It was not the Declaration of Rights.

The answer is fiscal and it belongs to the module on extraction. It is enough to record here that the men who declined to make the Declaration a condition of the crown were, within six months, refusing to vote the revenue for life.

Who got what

William and Mary took the crown, and William took the exercise, and with it the thing the operation had been mounted to obtain: England's entry into the war against Louis XIV, declared in May 1689.

The men who did it took office and honour, in the ordinary way and at the ordinary rate. The signatories of the invitation and the peers who rose in the north were advanced in the peerage and given the great offices during the 1690s — Lumley, for instance, was created Earl of Scarbrough in April 1690 — and the pattern is unremarkable and should be recorded as unremarkable. What matters structurally is what they did *not* receive. No land. No confiscated estates. No grants out of anybody's forfeiture in England. Their reward was office, which the collection's own ranking of bindings places third of four: revocable by whoever holds the apex, and — decisively — leaving the holder's interest attached to an apex who will confirm him rather than to this one.

The Church of England kept everything and gained nothing. The establishment stood, the Test and Corporation Acts stood, the universities stayed closed. A

Comprehension Bill that would have brought moderate Presbyterians back inside the Church failed. The Toleration Act received the royal assent on 24 May 1689 and its long title states its scope exactly: an Act for exempting their Majesties' Protestant subjects dissenting from the Church of England from the penalties of certain laws. Not a grant of liberty; an exemption from penalties. Dissenters might worship in registered meeting houses, with licensed preachers, on taking the oaths, provided the doors were not locked. They remained excluded from office, from the corporations, and from the universities. Catholics were excluded from the Act by design, as were anti-Trinitarians; Jews are not mentioned and were not covered.

And the arms clause of the Bill of Rights, which later centuries have made much of, is drafted with the exclusion on its face: *that the Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law.* Two qualifications and a religious test in twenty words.

Those who would not swear. The Oaths of Allegiance and Supremacy to the new sovereigns were required, and something around four hundred clergy in England refused, including eight or nine bishops — the counts differ — among them William Sancroft, Archbishop of Canterbury. Sancroft had written the petition of the Seven Bishops with his own hand in May 1688; their prosecution had been the immediate provocation for the invitation, and their acquittal on 30 June 1688 was the news that the seven signatories were celebrating on the day they wrote it. Five of the seven bishops whose acquittal helped precipitate the Revolution would not swear to the settlement it produced, and were deprived. The Convention voted the thanks of the House to the clergy who had refused to read the Declaration of Indulgence; within eighteen months it was turning several of them out of their sees.

That is not hypocrisy and it should not be written as such. It is the exact fault line the landscape identified. The Anglican clergy had sworn, under two statutes, that it was not lawful upon any pretence whatsoever to take arms against the king; the Oxford Decree had commanded that submission be taught as clear, absolute and without exception of any state or order of men. A man who had meant those words in 1683 could not swear allegiance to William in 1689 without perjuring himself either then or now. Most found a way. Four hundred did not, and their refusal is the best available evidence that the doctrine had been genuinely believed rather than merely subscribed — because a formation that produces four hundred men willing to lose their livings over a technical question of oaths is a formation that took.

Scotland, where they used the other word

Five weeks after Westminster settled on *abdicated*, the Estates of Scotland met at Edinburgh and did the same job with the word the English had refused.

The Claim of Right, agreed on 11 April 1689, recites that James, "Being a profest papist did assume the Regall power and acted as King without ever takeing the oath required by law", that he invaded the fundamental constitution of the kingdom "and altered it from a legall limited monarchy To ane arbitrary despotick power", and concludes:

> *inverting all the Ends of Government wherby he hath forfaulted the right to the Croune and the throne is become vacant*

Forfeited. The word Nottingham's peers had fought a fortnight to keep out of the English resolution, because it made the crown conditional, sits in the Scottish instrument as its operative verb.

And the Scots meant it. Their document says James never took the coronation oath that would have bound him, so that he assumed the regal power without ever having accepted its terms — which is a straightforwardly contractual account of how a man becomes a king. The Claim of Right was tendered to William and Mary with the crown, and the Scottish settlement is generally read as conditional in a way the English one was not. The Scottish Convention went on to abolish the Lords of the Articles, abolish episcopacy, restore Presbyterian church government in 1690, and abolish lay patronage.

Set the two instruments side by side. The same man, in the same year, ceased to be king of two kingdoms — in one because he had abandoned the throne by his own act, in the other because he had forfeited it by breaking his terms. Those are not two ways of saying the same thing; they are incompatible accounts of what a crown is. In England the crown remained, in form, an inheritance that its holder had put down. In Scotland it became, in terms, a conditional grant that its holder had lost.

The collection's standing rule is that legitimacy is borrowed from whatever currency the audience already honours, and that one apex will run more than one robe at once, cut to different audiences, with no contradiction, because the audiences never compare notes. This is that rule in its purest recorded form, and it is sharper than the usual case, because these are not a public claim and a private one. They are two public statutes, in two capitals, three hundred and thirty miles apart, both printed, both in force, describing the same event in mutually exclusive terms — and the reason it worked is that the English political nation did not read Scottish statutes and the Scottish political nation had no vote at Westminster.

Note also which was the honest document. It was the Scottish one. Scotland said what had happened.

Ireland, where a settlement means land

The Irish column is the only one in which this settlement did what settlements in this collection normally do, and its arithmetic is on a different scale from everything above.

James's parliament at Dublin in the summer of 1689 repealed the Restoration land settlement and passed an Act of Attainder condemning some two thousand four hundred and forty-one named persons — overwhelmingly Protestant landowners — for high treason. It never took effect; the war was lost and the Act was voided. But it had been passed, it was printed, and every Protestant landholder in Ireland now had documentary proof of what a Jacobite restoration meant for him personally. Whatever else the Dublin parliament achieved, it converted the Irish Protestant interest from a beneficiary of the arrangement into a party that could not survive its reversal, which is a different and much stronger thing.

Then the confiscation. The Treaty of Limerick was signed on 3 October 1691 and its civil articles promised the Catholics of Ireland such privileges in the exercise of their religion as were consistent with the laws of Ireland, and secured the estates of those in arms or under Jacobite protection who submitted. A clause covering those in the counties still under Jacobite protection was, on the standard account, agreed in the original draft and omitted from the copy actually signed — apparently by accident, and the Lords Justices and William are generally held not to have wished to take advantage of the omission. The Irish parliament, when it came to confirm the articles by statute in 1697, left the clause out. The treaty is remembered in Ireland as the broken one, and this is the specific break.

The land itself: estates exceeding a million Irish acres, put at something around 1,060,000 statute acres after survey, vested in the crown by outlawry and attainder. Roughly two-fifths went to satisfy debentures issued to the Williamite soldiery for arrears of pay. The rest was granted, and a substantial part of it was granted to William's favourites, which caused a revolt in the English House of Commons — a parliament that had refused to fund the war adequately took strong exception to the king paying his friends out of the proceeds. A commission of inquiry reported in 1699; the Resumption Act of 1700 revoked almost all of William's grants and vested the forfeited estates in thirteen trustees for sale. Something over three thousand claims were entered and a few hundred allowed; the last identifiable forfeited estate was sold in the summer of 1703.

The net effect, on Simms's figures, is that the proportion of Irish land in Catholic hands fell from about twenty-two per cent in 1688 to about fourteen per cent in 1703. Set that against sixty per cent before 1641 and the century's work is visible in one line.

And here the module's third finding sits, because Ireland supplies the control the previous study needed.

The Protectorate paid its floor in arrears — years of unpaid wages owed to the New Model — and the Cromwell study established the consequence: arrears are a debt, not a stake; a debt is a claim against the state rather than a holding under it; a claim can be discharged by anybody solvent; and in 1660 a parliament paid the arrears and the most formidable army in Europe went home. A creditor is not a defender.

The Williamite settlement in Ireland took the same problem — an army owed money by a government that did not have it — and solved it the other way. The arrears were paid in debentures, and the debentures were satisfied in *land*. Which converts a claim against the state into a title under it: a freehold whose validity depends on the outlawries, the attainders and the statutes being good, held by a man who therefore has everything to lose if the Jacobite claim is ever made out, and who needs no instruction and no persuasion to defend the arrangement for the rest of his life and to raise his sons to do the same.

Same expense, same soldiers, two instruments, opposite outcomes. The Cromwellian settlement in England was substantially reversed within eighteen months. The Williamite settlement in Ireland stood for two hundred years and was defended, ferociously, by men whose grandfathers had been paid in it.

The collection's ranking of bindings — deed, by-product gain, office, debt — predicted exactly this, and this is its cleanest confirmation. It should also be said plainly what it cost and to whom. The mechanism that made the Irish settlement durable is the same mechanism that made it irreversible, and the people it was durable *against* were the majority of the population of the island.

Reading the settlement against the framework

The principal contribution is the seventh fiction, and it can be stated compactly.

Abdication. Object: an office, not land. Precondition: a holder who is alive, at liberty and claiming, so that ordinary vacancy is unavailable. Job: **transfer without a transferor and without a forfeiture.** Structure: the emptying is attributed to the loser's own act, and the act is constructed from his conduct rather than from any words of his, so that the instrument contains no agent but him. Reached for when a taker can afford neither a trial (which concedes that the office is justiciable), nor a conquest (which reopens every title held under it), nor a forfeiture (which concedes that the

office is held on terms and that somebody may enforce them). Tell: an active verb whose subject is the dispossessed. Grammatical test: read the operative sentence and ask who is doing something in it. If the only person acting is the man who lost, the fiction is of this family.

Two refinements attach to it and both are usable elsewhere.

The first is about how such a word is selected, and it inverts an expectation the framework carries. This collection has generally read the elaboration of a legal instrument as the measure of the constraint on its drafters — the more scrupulous the drafting, the more real the audience that had to be satisfied. Here the drafters reached for a term that was *empty*. Nottingham's objection was that *abdicated* is not a word known to the common law of England, and the objection was correct and was the point: every English word available carried its own consequences, and the Commons needed a word that carried none, so that its meaning could be supplied on the spot from Grotius, Bartolus and Calvin's *Lexicon*. **Where every term in the domestic legal vocabulary drags a consequence the drafters cannot accept, expect them to import one from outside the system, and read the imported word's foreignness as the reason for its selection rather than as an accident of learning.**

The second is about consideration. The Declaration of Rights was read before the crown was tendered and was not a condition of it; the instrument recites an "entire confidence" where a covenant would sit; and the terms became law ten months later as a separate statute. **A settlement whose consideration is performed after the conveyance and recited as a separate transaction cannot be avoided for failure of consideration, and therefore does not, by itself, bind the grantee at all.** The drafters knew this and chose it, because the alternative — a conditional crown — was the thing the whole three-week argument had been conducted to avoid. Which leaves the question of what actually did bind William to be answered elsewhere, and points it firmly at the money.

Two further findings compound earlier work rather than claiming new ground.

Ireland confirms the ranking of bindings by inversion. The Protectorate paid its army in arrears and the Cromwell study found that a creditor is not a defender; the Williamite settlement paid the same kind of debt in freehold, and manufactured several thousand defenders whose descendants were still defending it in the nineteenth century. The variable is not the size of the payment or the loyalty of the recipient. It is whether what he ends up holding is a claim against the order or a title under it.

And the Scottish and English instruments of 1689 give the audience-indexed robe its cleanest demonstration in the corpus. Two statutes, five weeks apart, describe the same man's loss of the same crown as an abdication and as a forfeiture — accounts that

cannot both be true and were both in force, in two kingdoms under one sovereign, because the two political nations that had to believe them did not read each other's legislation. Where the collection has previously had to infer audience-splitting from a ruler's inconsistent claims, here it can simply set two public Acts side by side.

Finally, a discipline. It is tempting to read all of this as cynicism — a room full of lawyers picking a Latin word to launder an invasion. That reading is available and it is not what the record shows. The men in the Painted Chamber were arguing, at length and with evident distress, about a question that had no good answer: how to remove a king in a country whose entire law and religion said he could not be removed, without conceding a principle that would make every future king removable, and without repeating the thing they had spent thirty-nine years teaching their children never to repeat. Clarendon and Nottingham lost, and they were not wrong. Somers and Treby won, and they were not lying. The fiction they produced was a fiction, and it was also the least destructive instrument available to men who had to produce something before the Dutch army's welcome ran out. Naming it as a fiction is not an accusation. It is the only way to see what it was for.

A note on sources. Quoted exactly from public-domain primary texts: the Commons' resolution of 28 January 1689 at "having endeavour'd to subvert the Constitution of the Kingdom" through "and that the Throne is thereby become Vacant"; the Lords' two amendments at "Instead of the Word abdicated, read deserted" and "Leave out these Words, And that the Throne is thereby vacant"; the Commons' reasons for disagreement, including "the Word deserted respects only the withdrawing, but the Word abdicated respects the whole"; the Earl of Nottingham's reasons at "do not find, that the Word abdicated is a Word known to the common Law of England" and at "a voluntary express Act of Renunciation; which is not in this Case" and at "by the Constitution of the Government, the Monarchy is hereditary, and not elective" and "no Act of the King alone can bar, or destroy, the Right of his Heirs to the Crown"; Nottingham's question "Whether you mean by Abdication, a Renouncing for himself, or for himself and his Heirs?"; Somers's speech at "by doing such Acts as are inconsistent with the holding or retaining of the thing" and "hath the same force against your own Amendment"; Serjeant Holt at "the Government and Magistracy is under a Trust, and any acting contrary to that Trust is a renouncing of the Trust, though it be not a renouncing by formal Deed"; Serjeant Maynard at "Nemo est haeres viventis"; the Earl of Pembroke at "the King is dead in Law by this Abdication or Desertion of the Government"; Sir Robert Howard at "I doubt you have been (pardon me for saying it) all guilty of High Treason" and at "Use what words you will, fill up, nominate, or elect"; and Sir Christopher Musgrave at "to vote the Throne, is Vacant,

would be actually to depose the King" — all from *The History and Proceedings of the House of Commons*, volume 2 (London, 1742), which prints the conference and free conference of 4–6 February 1689 at length, together with the division of 151 to 282. William's letter to the Convention of 22 January 1689, at "by whom I have been enabled to rescue this Nation", is from the same volume. The Bill of Rights is quoted from *Statutes of the Realm* as reproduced at legislation.gov.uk, at the limitation clause from "That William and Mary Prince and Princesse of Orange be and be declared King and Queene" through "to the Heires of the Body of the said Prince of Orange", at the arms clause "that the Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law", and at the "entire confidence" passage, which is given in the modernised orthography of the Avalon and Yale reproductions where the spelling differs. The Claim of Right (Scotland) 1689 is quoted at "Being a profest papist did assume the Regall power", at "altered it from a legall limited monarchy To ane arbitrary despotick power", and at "wherby he hath forfaulted the right to the Croune and the throne is become vacant", from the text at legislation.gov.uk. The long title of the Toleration Act 1688 is quoted from the same source.

Paraphrased and credited to modern scholarship or drawn from the standard reference literature: the proceedings of the Convention on 28 January and the alternatives canvassed there; the tender of the crown on 13 February and the scholarly consensus that the Declaration was read but not made a condition of acceptance; the scope and limits of the Toleration Act; the nonjuring schism; the Scottish ecclesiastical and constitutional settlement of 1689–90; the Dublin parliament of 1689 and its Act of Attainder; the Treaty of Limerick and the omitted clause; the Williamite confiscation, the Resumption Act 1700 and the trustees; and the honours conferred on the Revolution's principal English supporters.

Contested figures are given as ranges and several points are flagged. The number of persons attainted by the Dublin parliament is given as 2,441 on the standard account; the acreage forfeited is given as over a million Irish acres, approximately 1,060,000 statute acres after survey, and the specialist literature contains discrepancies which one recent article attributes in part to an error in Simms; the proportion satisfying army debentures is given as roughly two-fifths; the number of claims before the trustees is given at something over three thousand, with printed lists of 3,140 and 3,150 both in circulation and a few hundred allowed. The Catholic share of Irish land at 22 per cent in 1688 and 14 per cent in 1703 follows Simms and is the figure most commonly cited; it rests on reconstructions from imperfect surveys. The number of nonjuring clergy is given as about four hundred, and the number of nonjuring bishops as eight or nine,

the counts differing between sources; the statement that five of the Seven Bishops were among them follows the standard account.

Three things that would embarrass the argument are flagged. First, the account of the Limerick clause as accidentally omitted and not exploited by William follows a particular reading of the episode that is more favourable to the government than the Irish tradition allows, and it is given here as the standard scholarly view rather than as an agreed fact. Second, this module treats the Bill of Rights limitation as a strict settlement in form; that is an observation about drafting rather than a claim that any participant said so, and no contemporary has been quoted describing it in those terms. Third, the reported reluctance of Mary to reign alone and of William to accept a regency rests substantially on Burnet and on memoir evidence, is not documented in the Convention's record, and is given here as reported. Every load-bearing fact in this module is to be re-verified against a primary or standard source before it is built upon.

MODULE 3

As Their Ancestors in Like Case Have Usually Done

The robe — a revolution announced in the grammar of restoration, three incompatible warrants stacked in a single sentence of statute, a book burnt by the hangman for saying out loud what the fleet had done, and the philosopher who was not the government's argument

What had to be covered, and who had to be told

A robe is a claim of rightfulness laid over a floor of force to make the force cheap to hold, and it is cut for the audience whose willing belief the order actually needs. So the module begins by naming what was to be covered and who had to accept the covering, because the shape of the drafting follows from both.

What had to be covered was this. A foreign sovereign prince had landed in England with a professional army paid for by a rival state; the king's forces had dissolved without a battle; the king had been detained, released, and allowed to leave; an assembly summoned by letters bearing no seal and no royal authority had declared him to have abdicated and the throne to be empty; and the crown had then been settled by that assembly on his daughter and her Dutch husband, with the executive power in the husband, who stood fourth in the line of succession the same instrument created. Every one of those acts was, on the law of England as it had stood eighteen months earlier, treason.

Who had to accept it is the more important question, and there were four audiences that mattered, plus two that did not.

The first and hardest was the Anglican clergy and the Tory gentry — the men who ran the counties, filled the commissions of the peace, mustered the militia and preached in every parish, and who had spent twenty-five years swearing under two statutes that it was not lawful upon any pretence whatsoever to take arms against the king. Their compliance was the cheap foundation the whole thing had to rest on. They were also the audience least able to accept any account that made the crown conditional.

The second was the Convention itself, and behind it the several hundred men who had signed, ridden, defected or addressed between June and December 1688. They needed a version of events in which nothing they had done was a crime.

The third was the United Provinces and the coalition forming against Louis XIV, whose interest was not in English constitutional theory at all but in England's fleet,

army and revenue entering the war. William's own letter to the Convention put that plainly on its first day, warning that the States who had enabled him to rescue the nation could not much longer be deprived of their troops, and that delay was the second most dangerous thing after division.

The fourth was Protestant Europe, for whom the whole business had to read as a deliverance rather than as a Dutch land-grab.

And two audiences were not addressed at all. The Catholic majority of Ireland and the Presbyterian south-west of Scotland received no robe, because nobody proposed to argue them into anything. They were handled by the floor. Force never pays for what it does not need, and the silence toward them is as informative as the elaboration toward everyone else.

The grammar of restoration

Read the Declaration of Rights for its grammar before reading it for its content, because the grammar is where the claim lives.

The Convention, it says, being assembled in a full and free representative of this nation, and considering the best means for attaining the ends aforesaid, does —

> *in the first place (as their Auncestors in like Case have usually done) for the Vindicating and Asserting their auntient Rights and Liberties, Declare*

Nothing in that sentence is being made. Rights are being *vindicated and asserted*, which are the verbs a lawyer uses for a title he already has and somebody has disturbed. And the parenthesis does the heavy lifting: *as their ancestors in like case have usually done*. Removing a king, declaring a throne empty and settling the crown by statute on a foreign prince is presented as a thing English ancestors had *usually* done, in cases like this one, as a matter of ordinary practice.

The enacting clause of the Bill of Rights repeats it with the volume up. Parliament prays that it be declared and enacted

> *That all and singular the Rights and Liberties asserted and claimed in the said Declaration are the true auntient and indubitable Rights and Liberties of the People of this Kingdome*

Ancient. Indubitable. True. Three adjectives, none of which means new.

This is the insider's grammar, and the collection has now watched the same country reach for it three times. Henry VIII's statutes said *is and ought to be*, and *so hath been accepted in the world, by divers sundry old authentic histories and chronicles*, and thereby

presented the largest jurisdictional revolution in English history as the removal of a usurpation. The Restoration Militia Act of 1661 said that the command of the militia *is and by the Lawes of England ever was the undoubted Right of His Majesty*, and thereby presented twenty years of contrary practice as an aberration. And the Declaration of Rights says *ancient*, *indubitable*, and *as their ancestors in like case have usually done*.

Against those three stands the one exception. In March 1649 the Act abolishing the kingly office said that the office had been *found by experience* to be unnecessary, burthensome and dangerous. That is an argument from consequences, and the previous study in this sequence established what it cost: an argument from experience can be answered by experience, and eleven years later the experience of the Protectorate was entered on the other side of the ledger.

Set the four side by side and the pattern is not a coincidence of style. **The grammar reports the drafter's position.** A man who is outside the order and taking it can afford to say that something new is being made. A man who is inside it, and whose own standing depends on the order's continuity, cannot — because the moment he concedes that a new thing is being made, he concedes that things can be made, and everything that rests on the old continuity is reopened, beginning with his own title to his own estate. The men in the Convention were landowners whose deeds descended from the crown they were disposing of. They had, in the most literal sense available, to say that nothing was happening.

And they went one better, in a clause that is easy to read past and should not be:

> *And they do claim, demand and insist upon all and singular the premises as their undoubted rights and liberties, and that no declarations, judgments, doings or proceedings to the prejudice of the people in any of the said premises ought in any wise to be drawn hereafter into consequence or example*

The proceedings not to be drawn into consequence or example are James's; that is the plain reading. But the clause sits in a document that had just performed the most extraordinary set of proceedings in English constitutional history, and the instinct it expresses runs through the whole settlement: *this must not become a precedent.* An assembly that had summoned itself without writs, deemed a living king to have departed, and conveyed a crown by limitation, wrote into its own instrument that nothing here was to be cited later.

There is one further loop worth noticing. The same passage says that the Convention was *particularly encouraged* in its demand of rights "by the declaration of his Highness the prince of Orange as being the only means for obtaining a full redress

and remedy therein." The Declaration of Rights cites, as its warrant, the manifesto of the man who invaded. The robe of February 1689 rests on the robe of October 1688, which rested on an invitation from seven men who signed in cipher. Nothing in the chain touches the ground.

Three warrants stacked in one sentence

Now the recognition clause, which is where the settlement says what it thinks it is doing, and which is the most revealing sentence in the statute.

The Lords and Commons, it runs, seriously considering how it hath pleased Almighty God in his marvellous providence and merciful goodness to this nation to preserve their said Majesties' royal persons most happily to reign over us upon the throne of their ancestors, for which they render unto him from the bottom of their hearts their humblest thanks and praises, do truly, firmly, assuredly and in the sincerity of their hearts think, and do hereby recognise, acknowledge and declare, that King James the Second having abdicated the government, and their Majesties having accepted the crown and royal dignity as aforesaid, their said Majesties did become, were, are and of right ought to be by the laws of this realm our sovereign liege lord and lady, King and Queen of England.

Count the warrants in that one sentence.

Providence. God's marvellous providence and merciful goodness preserved them. And a few paragraphs earlier, in a parenthesis, William is described as him *whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power.* Divine agency, twice, in a statute.

Ancestry. They reign *upon the throne of their ancestors.* Mary was James's daughter and William was Charles I's grandson, so the phrase is defensible; but its function is to assert continuity of blood in a document that had just settled the crown by limitation on the fourth person in a stated order of remainders.

Legal right. They *did become, were, are and of right ought to be by the laws of this realm* sovereign lord and lady. That is Henry VIII's formula almost word for word — *is and ought to be* — and it does the same work: the state of affairs is reported as a legal fact, not enacted as a legal change.

And what is not there. **Consent** does not appear as a ground of title anywhere in the Declaration or the Bill of Rights. Not once. The word that later centuries would make the meaning of 1689 is absent from the instrument of 1689.

Now, a stacked warrant of that kind is normally read as confusion, or as drafting by committee, and it is neither. It is a coalition document and every element in it is there because a faction required it and would not vote without it. Providence for the Whigs,

for the dissenters, and for the pulpits that would have to preach this on Sunday. Ancestry for the Tories who had spent February refusing to concede that the crown could be diverted from the line. Legal right for the lawyers, who needed a formula that changed nothing. Abdication for the men who needed an indemnity. And no consent at all, because consent implies a grantor, and a grantor implies an elective crown, which the Lords had fought a fortnight to keep out.

This is worth stating as a framework refinement, because it is a case the existing account does not quite cover.

The collection holds that legitimacy is borrowed rather than minted, and that one apex will therefore run **more than one robe at once**, cut to different audiences, with no contradiction — Timur as *güregen* to his steppe cavalry and Sword of Islam to his Persian subjects — and that this works precisely because the audiences never meet to compare versions. That is a *plural* robe, and its precondition is distance.

Here the audiences were in the same room. Whig and Tory, lawyer and bishop, sat in one chamber and had to vote on one text. Distance was unavailable, and so the same pressure that produces a plural robe produced instead a **stacked** one: several incompatible warrants laid on top of each other inside a single sentence, none of them selected, none of them denied, all of them enacted.

Stated for the card: **where the audiences an apex must satisfy are separated by distance, expect a plural robe — several claims, one per audience, mutually unread. Where they are assembled in one body that must produce a single text, expect a stacked robe — several claims in one document, layered rather than chosen. Read the stack as an inventory of the factions that had to be carried.**

And note the difference in stability, because it matters for everything that follows. A plural robe is stable, since no one is in a position to notice the contradiction. A stacked robe is unstable, because anybody can read the whole sentence — and within a generation, men will begin arguing about which of the layers is load-bearing. That argument is the entire subsequent history of what 1689 is held to have meant, and the Bill of Rights was drafted so that both sides could win it.

Providence: the robe that was actually preached

The layer that did the daily work in the 1690s was not the legal fiction. Very few people outside Westminster Hall could follow an argument about *abdicare* with the accusative. What was preached from ten thousand pulpits was deliverance.

The materials were extraordinarily good and some of them were free. The fleet had sailed on a wind that carried it down the Channel and pinned the English fleet in the Thames — the Protestant wind. It had landed on the fifth of November, the

anniversary of the Gunpowder Treason, one of the three state services in the Book of Common Prayer, preached in every parish in the kingdom that very morning. The liturgy for 5 November was subsequently amended to give thanks for the Revolution as well, so that one service commemorated two deliverances from popery a century apart. Days of public thanksgiving were appointed. The Convention voted them on its first day.

Gilbert Burnet, who had drafted the English text of William's Declaration, preached the campaign's theology and was made Bishop of Salisbury for it in March 1689 — consecrated by a commission of bishops to whom Sancroft had delegated the duty rather than perform it himself, which tells you where the Church stood in the same month.

Providence is the cheapest legitimation available to an armed man without a hereditary title, and the previous study in this sequence established both why and what it costs. It converts a result into a warrant in one step, with no argument to be made and no research to be done. And it has a fatal property: **it is two-way.** A hereditary title survives a lost battle, because descent does not move; a providential title cannot, because the result is the argument. Cromwell's regime was at war continuously from its foundation to its end partly because a robe made of victories requires victories, and a failed expedition to Hispaniola in 1655 produced a legitimacy crisis and a national search for the sin that had caused it.

Test it here, because the case supplies the test. William's reign contained a naval defeat off Beachy Head in 1690, years of expensive stalemate in Flanders, the loss of Namur and its recapture, and — worst for the title itself — the death of Mary in December 1694, which removed the person through whom the hereditary layer ran and left William reigning on a remainder. None of these produced a legitimacy crisis of the Cromwellian kind. And when the assassination plot of February 1696 failed, its failure was promptly read as providential confirmation, which is the same mechanism running the other way.

The refinement follows: **providence is fatal as a sole warrant and safe as a supplementary one.** Cromwell had nothing else, so every reverse was evidence against him. William had a statute, an inheritance in his wife, and a legal fiction, so a reverse was a reverse. The Cromwell study's finding stands and gains a boundary condition, and the boundary is worth having, because providence is the most commonly available robe in the record and its danger has now been located precisely: not in the claim, but in the claim's exclusivity.

The word that could not be said

Now the sharpest thing in this module, and it is a suppression.

In October 1688, before the fleet sailed, the Additional Declaration had gone out of its way to deny that the expedition was a conquest — the forces being, in its own words, utterly disproportioned to that wicked design, and, decisively, because those who had invited the Prince could not join in an attempt of conquest without making void their own lawful titles to their honours, estates and interests.

Four years later a pamphlet appeared in London called *King William and Queen Mary Conquerors*. Its argument, according to its own title page, was that their Majesties had on their side against the late king the principal reasons that make conquest a good title, and that this was consistent with the parliamentary declaration that King James had abdicated the government — and it was addressed particularly to those who had so far refused the oaths but might allow a title by conquest consequent on a just war. It was, in other words, a defence of the regime. It was written to bring nonjurors in. It was licensed on 11 January 1693 by the government's own licenser of the press, Edmund Bohun, a Tory who happened to hold that theory himself.

On 21 January 1693 the House of Commons resolved, *nemine contradicente*, that the pamphlet, "wherein are several Matters asserted, of dangerous Consequence to their Majesties, to the Liberties of the Subject, and Peace of the Kingdom", be burnt by the hand of the common hangman. In the same sitting it resolved that the Privy Councillors of the House move the king to remove Bohun from his employment. He was removed, and imprisoned.

Hold the shape of that. A parliament ordered the public burning of a book written in defence of the king it had installed, and sacked the official who had licensed it, because the book gave the wrong reason. Not a hostile reason — a *true* one. The largest foreign landing in England since 1066 had put a Dutch prince on the English throne, and the one description of that event which the settlement could not tolerate was the accurate one.

The mechanism is the one already visible in October 1688 and it is entirely rational. If William held by conquest, then every title in England derived from a conqueror, and every title in England was therefore open to be reconstituted at his pleasure — including the estates of the men sitting in the House that burnt the book. The Norman doctrine that no man in England owns land outright but holds it of the crown had been laid down six hundred years earlier by a duke with no title of his own, and in January 1693 it reached into the chamber and told a parliament what it was forbidden to hear.

For the framework this is a clean and unusual diagnostic. The collection reads suppression as the outflow valve of the seam: the interpreter class starves a rival account by banning it or, more cheaply, by leaving it untaught. Almost always the starved account is an enemy's. Here it is a friend's, and it is correct.

Stated for the card: **where an order suppresses a description of its own founding that was written in its defence, it has identified for you, more precisely than any hostile account could, the single fact its settlement cannot survive.** A regime's enemies attack it at many points and most of the attacks are noise. A regime's censorship of its own supporters is signal.

The oath, and the seven years it took to say "rightful"

The most exact instrument available for measuring what a regime's robe actually claimed at any given moment is the oath it required, because an oath has to be swearable by the people who must swear it. Here the series is dateable and it moves.

The oath imposed in 1689, replacing the old oaths of allegiance and supremacy, required the swearer to *be Faithfull and beare true Allegiance to Their Majestyes King William and Queene Mary*. That is all. No assertion that they were rightful. No assertion that they were lawful. No abjuration of James. The formula was cut to the minimum that would allow an Anglican clergyman with a conscience to take it, and it was cut that way deliberately, because the alternative was to lose the parish clergy wholesale.

That minimum was still too much for about four hundred of them, but it was enough for the great majority, and the reason it was enough is a book. In 1690 William Sherlock, Master of the Temple, who had at first refused, published *The Case of the Allegiance due to Soveraign Powers, Stated and Resolved*, and swore. His argument was that allegiance is owed to the power actually in possession, because it is God's providence that places rulers in thrones, so that a subject may obey a settled authority without pronouncing on how it got there. It is a doctrine of *de facto* allegiance dressed in the vocabulary of providence, and it is exactly the bridge a man formed in non-resistance needed in order to cross. Sherlock was made Dean of St Paul's in 1691.

Twice in 1692 the ministry tried to go further, promoting bills that would have required an abjuration of James and an acknowledgement of William's right. Both were defeated.

Then, in February 1696, the assassination plot was discovered, and the political conditions changed in a week. An Association was drawn up, modelled on the Elizabethan Bond of Association, pledging its subscribers to defend William and to revenge his death — and acknowledging him as **rightful and lawful King.** It was

widely subscribed, well beyond the officials at whom it was aimed, and was shortly given the force of law, all Crown officers being required by statute to subscribe.

Seven years. It took the regime seven years and a failed assassination to get the word *rightful* into a required oath, and it got it then only because a plot had made refusal look like complicity.

That series is the module's most useful single piece of evidence about the warrant, and it should be read carefully in both directions. It shows that the settlement of 1689 did not carry a theory of right that anyone was prepared to require people to swear to. And it shows that a robe hardens by increments, under external pressure, in dateable steps — which is a general finding worth carrying: **where an order's oaths survive in series, the series is a better record of what its robe actually claimed at each date than any of its manifestos, because a manifesto need only be printed and an oath must be swearable.**

The doctrine that could not be won, and how it was closed anyway

About four hundred clergy in England, including eight or nine bishops and the Archbishop of Canterbury, would not swear even the minimal oath of 1689, and were deprived.

Their case was not obscurantism and it was not Jacobitism in most instances. It was that they had already sworn. Under the Corporation Act and the Act of Uniformity they had declared that it is not lawful upon any pretence whatsoever to take arms against the king; the University of Oxford had commanded that submission be taught as clear, absolute and without exception of any state or order of men; and the Book of Common Prayer required them, every 30 January, to lament the guilt of an innocent king's blood. A man who had meant those words in 1683 could not swear allegiance to William in 1689 without conceding that he had been lying at one date or the other.

This is structurally the same problem the Protectorate faced, and the parallel is exact enough to be worth drawing precisely. Cromwell's regime had to argue from scripture because scripture was the only authority left standing after the crown was abolished — and it could never win the argument, because the other side owned the same book, and Romans 13 sits in the same binding as 1 Samuel 8. An arbiter that both parties possess cannot decide between them.

In 1689 the arbiter both parties possessed was the Restoration settlement itself: the same statutes, the same oaths, the same liturgy, the same Decree. Whig and nonjuror

were quoting identical documents at each other, and the argument was unwinnable on its merits in exactly the same way.

And yet it closed, quickly and permanently, and the reason is the module's second compounding finding. The Interregnum's arbiter was a *text*, and a text has no doors: you cannot deprive a man of a Bible verse, and Henry VIII had already discovered that you cannot recall a book once you have published it. The Revolution's arbiter was an *institution* — the Church of England, with livings, sees, cathedrals, courts and universities attached — and an institution can be entered. Four hundred men were deprived of their freeholds and replaced with men who would swear. The nonjuring church survived, produced its own succession of bishops from 1693, and dwindled into irrelevance within two generations.

Stated plainly: **an unwinnable argument can still be closed if the arbiter is an institution rather than a text, because an institution has doors and a text does not.** That is the same finding the collection has approached from the other direction — that a ruler who makes a text the criterion of authority has handed out an instrument and cannot recall it — and it supplies the missing half. The question to ask of any contested doctrine is not who has the better case but what the case is lodged in.

It should also be said what the deprivations cost, because the framework's revealed-preference test cuts here. The regime lost four hundred parish clergy, an archbishop, and a substantial fraction of the most learned men in the English church, and it accepted the loss rather than soften the oath. Force never pays for what it does not need. A settlement that would rather lose four hundred beneficed clergymen than permit a formula that did not bind them has told you that the clergy's public conformity was worth more to it than the clergy's private goodwill — which is a statement about how thin the belief actually was and how much the order knew it needed the appearance of conformity to carry it.

The philosopher who was not the government's argument

Which brings us to the book that every later account puts at the centre of this and that was not, in 1689, at the centre of anything.

Two Treatises of Government was published in London late in 1689, with 1690 on the title page, anonymously. Locke never acknowledged it in his lifetime; his authorship was admitted only in a codicil to his will. The text he published was defective — he told his reader in the preface that the papers which should have filled the middle were lost and not worth recovering — and the corrupt text was not properly corrected until the sixth edition of 1764, sixty years after his death.

Peter Laslett's work established the fact that changes how the book must be read: the bulk of it was written between about 1679 and 1681, during the Exclusion Crisis, and revised after Locke went into exile in 1683. It was not composed to justify what happened in 1688. It was composed to justify a rebellion against Charles II that never took place. Richard Ashcraft's work pushed the point further into the politics of Shaftesbury's Whigs. The two propositions — that Locke's target was Filmer rather than Hobbes, and that the book belongs to the Exclusion Crisis rather than to the Revolution — are now the settled starting points of the scholarship, and Mark Goldie has argued they have become rigid enough to mislead, since Locke's target was the whole apparatus of Restoration Anglican royalism and not one squire's manuscript.

The First Treatise is the demolition of that manuscript and almost nobody reads it, which is a pity, because it tells you what the argument was actually against. Sir Robert Filmer's great position, Locke writes, is that *men are not naturally free*; that is the foundation on which absolute monarchy stands. And the thing being demolished is not an abstraction — it is *Patriarcha*, a book finished before the civil war and pulled out of a drawer and printed in 1680 because the Exclusion Crisis needed it. A text retrieved for one crisis being answered by a text written for the same crisis and published for a different one: that is how robes get made, and it is a better description of intellectual history than intellectual history usually gives.

Now the preface, which is the only place in the book that mentions 1688 and which is where its relation to the settlement can actually be tested:

> *These, which remain, I hope are sufficient to establish the throne of our great restorer, our present king William; to make good his title in the consent of the people; which being our only one of all lawful governments, he has more fully and clearly than any prince in Christendom; and to justify to the world the people of England, whose love of their just and natural rights, with their resolution to preserve them, saved the nation when it was on the very brink of slavery and ruin.*

Two things in that sentence.

The first is that the most radical political theorist writing in England, publishing anonymously and in danger, calls William *our great restorer*. The same word the Declaration used. The same word the invasion's own manifesto had used. If even Locke reached for restoration, the grammar was not a Tory affectation; it was the only register in which the event could be described by anybody.

The second is that the ground he gives — *his title in the consent of the people, which being our only one of all lawful governments* — appears nowhere in the settlement. Not in the resolution of 28 January, which grounds itself on abdication and an original

contract. Not in the Declaration of Rights, which grounds itself on ancient and indubitable rights. Not in the Bill of Rights, which grounds itself on providence, ancestry and legal right. The Convention did not adopt Locke's warrant, did not cite him, did not know it was reading him, and in most cases was not.

So this module can settle one half of the study's central question and must decline the other half.

What it can settle: **Locke was not the government's argument in 1689.** The robe as adopted was a stack of providence, ancestry, ancient right and a legal fiction, held together by a coalition that could agree on none of them singly. The vocabulary later generations treat as the meaning of the Revolution — contract, consent, natural right, the trust that a ruler may forfeit — is present in the record of these years only in the mouths of individual managers arguing on their feet (Holt on government as a trust), in a condemned Oxford proposition, and in an anonymous book that few people bought.

What it must decline: when Locke's account became the official one. That cannot be established from the material this module rests on, and the honest position is to say so rather than reach for the familiar story. The evidence available here — anonymity, a defective text, few editions in the author's lifetime, no correction until 1764 — is consistent with a canonisation that is largely eighteenth-century and substantially American, but consistency is not proof and this study has not done that research. It is flagged as an open question and carried forward.

One interim observation is nonetheless available, and it points where the seed's third possibility pointed. The warrant did not visibly move in February 1689. Nobody decided to move it; the documents show a coalition stacking every available old warrant rather than adopting a new one, and the required oath said nothing about right for seven years. What did change in 1689 was not the theory but the *arrangement* — an assembly that met without writs, a crown limited by statute, a revenue that would not be voted for life, an army authorised annually. Whether a theory arrived afterwards to describe an arrangement that already existed is precisely the question this study exists to answer, and answering it here, on this evidence, would be answering it early.

Reading the robe against the framework

The principal contribution is the stacked robe.

The framework holds that legitimacy is borrowed from whatever currency an audience already honours, and that one apex therefore frequently runs several robes at once, cut to several audiences, without contradiction — because the audiences never meet. That account has a hidden precondition, and this case exposes it: the

precondition is **distance**. Timur's steppe cavalry and his Persian subjects were never in a room together. The Algerian settler and the Paris deputy read different newspapers.

Where the audiences an apex must satisfy are assembled in a single body that must vote a single text, distance is unavailable, and the same pressure produces a different artefact. Not several robes side by side, but several warrants **layered inside one instrument** — providence, ancestry, ancient right, and a legal fiction, all in the recognition clause of the Bill of Rights, none chosen, none disclaimed, all enacted.

Two consequences follow and both are usable.

The stack is an inventory. Read the layers and you have a list of the factions that had to be carried, and a rough measure of each one's bargaining power by how much drafting it obtained. Here the Tories got ancestry and the *of right ought to be* formula; the Whigs and the dissenters got providence and the original contract; the lawyers got a legal fiction with no English precedents attached; and the peers got the exclusion of consent. That is a more reliable map of the coalition than any list of votes, because a vote records a decision and drafting records a price.

The stack is unstable in a way the plural robe is not. A plural robe is safe because nobody can compare the versions. A stacked robe can be read whole by anybody, and the layers will be prised apart the moment the coalition that laid them down dissolves. The subsequent two centuries of argument over what the Revolution meant is not a failure of understanding; it is the predictable consequence of a document drafted so that incompatible parties could each find their own warrant in it. **Where a study finds a founding instrument containing several mutually exclusive grounds of authority, it should expect the later history of that order to consist substantially of a fight over which ground was the real one, and should not assume that the winner of that fight was the original meaning.**

Four findings compound earlier work.

Providence is fatal as a sole warrant and safe as a supplement. The previous study found that a title manufactured out of victories is results-sensitive, cannot survive a defeat, and keeps its holder permanently at war. This case has the same providential claim, in statute, and rides out a naval defeat, years of stalemate, and the death of the queen through whom the hereditary layer ran — because it was one layer among four. The Cromwellian finding stands and acquires its boundary.

Grammar reports position. Restoration grammar — *is and ever was*, *ancient and indubitable*, *as their ancestors in like case have usually done* — is the insider's register, and 1534, 1660 and 1689 all use it. The one English settlement that used the outsider's register, *found by experience*, is the one that failed. The grammar does not cause the

outcome; it discloses the position, and the position is that a man whose own title descends from the order he is altering cannot afford to say that anything is being made.

A regime's censorship of its own supporters is the sharpest available signal. The Commons burnt a pamphlet arguing for the king it had installed, because the pamphlet said conquest. A hostile account tells you what a regime's enemies think; a suppressed friendly account tells you what the regime knows it cannot survive.

An unwinnable argument closes if its arbiter is an institution rather than a text. Both sides in 1689 owned the same statutes, oaths and liturgy, exactly as both sides in 1649 owned the same Bible. The difference is that the Church of England had livings and the Bible does not, so four hundred men could be deprived and replaced. The collection already knew that publishing a text loses you control of it; this is the same rule seen from the other end.

And on the provenance question the card requires — forged, redirected, or inherited — the answer here is **redirected, at a price.** The regime built no new interpreter class. It took the existing one, which had spent a generation preaching non-resistance, and pointed it at itself: the same pulpits, the same universities, the same 5 November service with a new deliverance added to the old one. That is the cheap route, because somebody else has already done the work of earning the trust. Its price is that the borrower must speak the lender's language — which is why the settlement's founding statute reads like a Tory document, why it claims ancient rights rather than new ones, why it thanks God in a parenthesis, and why the word *consent* does not appear in it anywhere.

A note on sources. Quoted exactly from public-domain primary texts: the Declaration and Bill of Rights, at "(as their Auncestors in like Case have usually done) for the Vindicating and Asserting their auntient Rights and Liberties", at "the true auntient and indubitable Rights and Liberties of the People of this Kingdome", at the non-precedent clause "no declarations, judgments, doings or proceedings ... ought in any wise to be drawn hereafter into consequence or example", at "to which demand of their rights they are particularly encouraged by the declaration of his Highness the prince of Orange", and at the parenthesis describing William as him "whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power" — from *Statutes of the Realm* as reproduced at legislation.gov.uk, with the modernised orthography of the Avalon and Yale reproduction used where a passage is quoted in modern spelling. The Commons' resolution of 21 January 1693 ordering *King William and Queen Mary Conquerors* to be burnt by the common hangman, at "wherein are several Matters asserted, of dangerous Consequence to their Majesties, to the Liberties of the Subject, and Peace of

the Kingdom", and the resolution on the same day to move the king to remove Edmund Bohun from the office of Licenser of the Press, are from the *Journal of the House of Commons*, volume 10. William's letter to the Convention of 22 January 1689 is from *The History and Proceedings of the House of Commons*, volume 2 (London, 1742). The 1689 oath is quoted at "be Faithfull and beare true Allegiance to Their Majestyes King William and Queene Mary". John Locke's preface to *Two Treatises of Government* is quoted at "These, which remain, I hope are sufficient to establish the throne of our great restorer, our present king William" through "saved the nation when it was on the very brink of slavery and ruin", and the First Treatise at Filmer's "great position ... that men are not naturally free"; Sir Robert Filmer's *Patriarcha* has been referred to but is quoted at length in the landscape rather than here. The pamphlet title of Blount's *King William and Queen Mary Conquerors* is given from the description in the *Dictionary of National Biography*.

Paraphrased and credited to modern scholarship: Peter Laslett's dating of the *Two Treatises* to 1679–81 with revision to 1683, and his establishment of a reliable text; Richard Ashcraft on the Exclusion-crisis politics of the work; Mark Goldie on Locke's wider target in Restoration Anglican royalism; the standard accounts of Burnet's role as draftsman and propagandist and of his consecration in March 1689; William Sherlock's *de facto* argument of 1690 and his subsequent preferment; the Association of 1696 and the statutory requirement to subscribe it; and the standard narrative of the nonjuring schism.

Contested and uncertain points are flagged. The tail of the recognition clause of the Bill of Rights — "in his marvellous providence and merciful goodness ... upon the throne of their ancestors ... did become, were, are and of right ought to be" — is given here from reproductions of the statute and from Burke's close quotation of the same passage in the *Reflections*; the legislation.gov.uk text was retrieved only in part and the full clause should be checked against *Statutes of the Realm* before compilation. The reference literature states that Burnet's *Pastoral Letter* of 1689, which grounded William and Mary's claim on the right of conquest, was itself burnt by the common hangman; this module does not rely on that statement, because the order located in the Commons Journal for January 1693 relates to Blount's pamphlet and not to Burnet's letter, and the two may have been conflated in the secondary tradition. The claim that the 5 November liturgy was amended to include thanksgiving for the Revolution is taken from the scholarly literature and the amended text has not been inspected here. The number of nonjuring clergy is given as about four hundred and the bishops as eight or nine, the counts differing between sources. The publication history of the *Two Treatises* — few editions in Locke's lifetime, no reliable text before 1764 — is drawn

from the standard bibliographical accounts; the claim that its canonisation is largely an eighteenth-century and American event is stated in this module as an open question rather than as a finding, and has not been researched here. Every load-bearing fact in this module is to be re-verified against a primary or standard source before it is built upon.

MODULE 4

To Do My Duty in That State of Life

Formation — the machinery that made English children, which the Revolution inherited working and did not alter in a single word; a kingdom that built the most ambitious formation apparatus in Europe at its landowners' compulsory expense; a kingdom that made the majority's formation a crime and put nothing in its place; and the annual observances that were installed a century later by men who needed them

What formation is, and the rule that governs it

Formation is not propaganda and it is not persuasion, and reading it as either is the commonest way an analysis of an order goes wrong.

Propaganda argues with an adult who already has a framework, and the adult can weigh it, discount it, or laugh at it. Formation is what installed the framework in the first place, before the person was old enough to weigh anything. It is the work done by the family, the parish, the school, the calendar and the rites of the life cycle on a child between about four and about fourteen, and what it installs is not a set of opinions but the apparatus by which opinions are afterwards formed: who counts as a natural superior, which voices count as knowledge, what a good life looks like, what is a proposition open to dispute and what is simply how the world is. A man can change his opinions all his life. He very rarely changes the thing that tells him which questions are questions.

This is why formation sets the benefit column rather than arguing with it. A person who has been formed to believe that obedience to lawful authority is what a decent man does is not weighing obedience against advantage and choosing obedience; he is doing what a decent man does, and the calculation the framework describes is running below his notice. That is what makes formation the cheapest thing a durable order owns, and it is why the orders that reach the cheap pole are the ones that had enough undisturbed generations to run it.

And one rule governs everything in this module, because the whole three-kingdom comparison turns on it. **There is no unformed person.** To be unformed is to be feral, and no society produces feral adults in any quantity; every child is formed by somebody, in some framework, whether or not the state has an opinion about it. It follows that a power which declines to form a population has not left that population blank. It has left the previous formation in undisturbed possession of the field, running

unopposed, producing adults who see the world through the framework of the thing the new power displaced. What the conqueror withholds, the predecessor supplies. The collection found this in British Kenya, where the government formed a thin administrative cadre and refused to form the rest — because forming them as Englishmen would have meant admitting them and conceding them rights — and discovered two generations later that the population it had declined to form had been formed anyway, into something it then had to police at ruinous cost.

This case is not a colonial one, and the colonial shape does not fit. What happened here is stranger, and the three kingdoms did three different things in the same decade under the same crown, which makes the comparison unusually clean.

What the machinery was in England, and what it installed

Begin with what was actually there in 1688, because the answer to what the Revolution changed is meaningless without it.

The English formation apparatus was the parish, and it was total in a way that is hard to recover now. A child was baptised at the parish font, and the register that recorded it was the only proof he existed. He was catechised by the parish priest, who was required to do it, and could not be confirmed until he could say the Catechism. He heard the same liturgy every week of his life in the same building, read out of the same book. He was married at that altar and buried in that ground. Attendance was compelled by statute, with fines for recusancy. There was no competing institution with anything like that reach, and for the great majority of English people there was no schooling at all beyond it.

And what the Catechism installed is worth quoting at length, because it is the most formative single page in the English language over two centuries and it is almost never read as what it is.

The child is asked what he chiefly learns by the Ten Commandments, and answers that he learns two things, his duty towards God and his duty towards his neighbour. And then:

> *My duty towards my Neighbour, is to love him as myself, and to do to all men, as I would they should do unto me: To love, honour, and succour my father and mother: To honour and obey the King, and all that are put in authority under him: To submit myself to all my governors, teachers, spiritual pastors and masters: To order myself lowly and reverently to all my betters: To hurt no body by word nor deed: To be true and just in all my dealing: To bear no malice nor hatred in my heart: To keep my hands from picking and stealing, and my tongue*

from evil-speaking, lying, and slandering: To keep my body in temperance, soberness, and chastity: Not to covet nor desire other men's goods; but to learn and labour truly to get mine own living, and to do my duty in that state of life, unto which it shall please God to call me.

Read the order of the clauses. Love your neighbour, honour your parents — and then, in third place, before honesty, before chastity, before anything else: honour and obey the King, and all that are put in authority under him. Then submit to governors, teachers, pastors and masters. Then order yourself lowly and reverently to all your betters.

Three things are being installed and none of them is an argument.

The first is a **map of authority**: king, then those put in authority under him, then governors and teachers and masters, then betters. A child learns the shape of the hierarchy in the same breath as he learns not to steal, and learns it as a duty of the same kind.

The second is a **posture**: lowly and reverently. Not merely compliance but bearing, which is the part that shows in a body for a lifetime.

And the third is the closing clause, which is the one that does the most work and reads most gently: *to do my duty in that state of life, unto which it shall please God to call me.* A child's position in the order is not presented as a fact about economics or inheritance or luck. It is presented as an assignment, made by God, to which the appropriate response is duty. That sentence does not defend the settlement. It removes the settlement from the class of things about which a defence could be wanted.

Around the Catechism sat the rest of the apparatus. The liturgical year scored the child's time — the fixed feasts, the moveable feasts, the harvest, the parish wake. Three state services were bound into the Prayer Book of 1662 and read annually in every parish: the fifth of November for the Gunpowder Treason, the twenty-ninth of May for the Restoration, and the thirtieth of January, whose full title states its own function with no ambiguity at all — *A Form of Prayer with Fasting, To be used yearly on the Thirtieth of January, Being the Day of the Martyrdom of the Blessed King Charles the First; to implore the mercy of God, that neither the Guilt of that sacred and innocent Blood, nor those other sins, by which God was provoked to deliver up both us and our King into the hands of cruel and unreasonable men, may at any time hereafter be visited upon us or our posterity.*

Every year, in every parish, a fast for the guilt of a king's blood, with a prayer that it not be visited on the children present.

Beyond the parish, the Act of Uniformity required schoolmasters to be licensed and to subscribe, which put the grammar schools inside the same system; the universities

were closed to anyone who would not conform; and the Book of Homilies, printed with the Articles and appointed to be read where a clergyman could not preach, contained the long homily against disobedience and wilful rebellion, which had been written after a northern rising in the sixteenth century and had been read in English churches ever since.

That was the machine. It had been captured intact by Henry VIII, damaged by his publication of the source, dismantled and then relinquished on principle in the 1650s, and reassembled with additions in 1662. In November 1688 it was running, and it was installing, in every English child, a doctrine of obedience which the events of the following eight weeks flatly violated.

What the Revolution changed in it

Nothing.

That statement needs the qualification of one amendment and one removal, and both are given below, but as a summary of the settlement's formation policy in England it is very close to literally true, and it is the module's central fact.

There was an attempt. In 1689 a Royal Commission was appointed to revise the liturgy — ten bishops and twenty other divines, a serious body containing the best men in the Church — with the object of altering the Prayer Book enough that moderate Presbyterians could be comprehended within the establishment rather than merely tolerated outside it. It sat, it worked, it produced a revised liturgy. The revision failed to obtain the assent of Convocation and was never carried into effect. The manuscript, in the commissioners' own handwriting, passed from archbishop to bishop to archbishop and lay in the library at Lambeth Palace, unpublished, until a Member moved in the Commons in 1854 that a copy be laid before the House.

So the Book of Common Prayer of 1662 stood, unaltered, and everything in it stood with it.

The Catechism was not touched. Every English child baptised after February 1689 went on being taught, in the words the law required, to honour and obey the King and all that are put in authority under him, to order himself lowly and reverently to all his betters, and to do his duty in that state of life unto which it should please God to call him — by a Church that had just watched a king removed, in a kingdom whose parliament had declared the throne vacant.

The thirtieth of January was not touched. The annual fast for the martyrdom went on being read in every parish for another hundred and seventy years, until it was removed by statute in 1859. Which means that for the whole of the eighteenth century, in the parish churches of a settlement founded on the removal of a king, the one thing

the population was formally required to remember about the removal of a king was that it had been a martyrdom and that the guilt of it might be visited on their posterity.

The homily against disobedience was not touched.

The single liturgical addition was this: the service for the fifth of November was amended to give thanks for the Revolution alongside the deliverance from the Gunpowder Treason. One deliverance from popery was added to another, on a day that already existed, in a service that was already being read. That is the entire liturgical footprint of the Revolution of 1688 in the formation of English children.

There was also one real change, and it was a removal rather than an installation. The Toleration Act exempted qualifying Protestant dissenters from the penalties for not attending the parish church. For the first time since the Reformation a substantial minority of English children could lawfully be formed outside the parish apparatus — in dissenting congregations, and increasingly in the dissenting academies, which by the 1690s were providing an education that in some subjects was better than the universities'. Nobody at the time doubted what had been conceded. When the Tories briefly held power a generation later they passed a Schism Act requiring schoolmasters to be licensed by a bishop and to conform, aimed squarely at the academies; it was repealed within five years. The point for this module is that the only formation change the Revolution made in England was to open a second lawful channel and then leave both channels alone.

Why nothing had to change, and what that tells you

The framework's sharpest diagnostic is that force never pays for what it does not need. An apex that already holds uncontested power and *still* pays a real, avoidable cost to acquire belief has revealed, by the expenditure, that the belief was genuinely necessary to some audience. And the reverse reading is just as informative: where an order that could easily have altered something did not alter it, and paid nothing, it has told you that it did not need what the alteration would have bought.

The Revolution settlement could have revised the Catechism. It had the Commission, the bishops, the parliamentary majority and the printers. It could have removed the thirtieth of January in a session; a later century removed it in an afternoon. It could have written a new service for the fifth of November instead of adding a clause to an old one. It did none of these things, and the failure of the comprehension scheme, though it had its own ecclesiastical politics, was accepted rather than forced.

What that tells you is what the settlement actually needed from the ordinary Englishman, and the answer is: not his belief.

It needed his harvest, his labour, and above all his excise — the duty on beer and salt paid weekly in small sums by people with no vote — and it needed him not to interfere. It got all three without asking him for anything, and it got them precisely because it left his year alone. His Christmas was not abolished. His Prayer Book was not replaced. His maypole was not cut down. His parish church was where it had always been, with the same words in it. The Revolution happened in Westminster and Torbay and passed over the parish almost without trace.

The contrast with the case immediately preceding this one is exact and worth stating, because the two settlements are on the same ground within forty years. The Protectorate abolished the Prayer Book, abolished the festival calendar on the ground that festival days have no warrant in the Word of God, prosecuted Christmas, dismantled the church courts, and put major-generals into the counties to enforce a reformation of manners — and thereby made itself felt in every English household every week of the year. A regime that touches the ordinary man's calendar has entered his life and must be paid for in his consent. A regime that leaves it alone is, to him, almost nothing, and almost nothing is very cheap.

A revolution that leaves the ordinary man's year alone is cheap to him, and the price of that cheapness is that it must leave the formation apparatus intact — including the parts of it that condemn what the revolution did.

That is the module's first finding, and it supplies the corpus with a condition it did not previously have. The collection has held three states of the formation apparatus in a conqueror's hands: **kept** and extended, as in Meiji Japan; **lost**, as when Henry VIII captured the most complete formation machine in Europe and destroyed its value by publishing the source; and **withheld**, as in Kenya, where forming the population would have meant admitting it. The Protectorate supplied a fourth, **relinquished on principle**, which is what a state does when it dismantles the inherited apparatus and then declines out of conscience to impose a replacement, and finds that the seat of trusted belief refills with whoever is best organised.

This case supplies a fifth: **inherited intact and left running unaltered, hostile clauses and all.**

And it comes with its own condition of survivability, which is the useful part. An order can afford to leave a formation apparatus running against it only where it does not need the belief of the people being formed. The Williamite settlement could afford it because its actual constituency was small and did not require catechising: several thousand landowners whose titles depended on the statute book, several thousand more with money in a bank secured on parliamentary taxes, a political nation of perhaps a few tens of thousands, and an officer corps. None of those men needed a

catechism to know where their interest lay. The ploughman who recited his duty to the King and all that are put in authority under him was not part of the arrangement, was not asked to be, and did not have to be.

The cost of that choice was real and it was deferred. The settlement had, for the ordinary Englishman, no positive account of itself at all — no story about what it was, no day in his year, no line in the words he had learned as a child. It ran on his indifference. Indifference is a serviceable foundation and it is not the same thing as belief, and an order resting on it has no reserve to draw on when it is challenged.

The formation left in possession, and the bill it presented

The Church went on forming English children into a doctrine of non-resistance, and some of the people it formed acted on it.

About four hundred clergy, including the Archbishop of Canterbury and eight or nine bishops, refused the oaths and were deprived. They did not evaporate. Deprived of livings, they became tutors, chaplains in gentry households, and schoolmasters, which are formation positions of the most direct kind — a man turned out of a parish for a scruple about an oath, teaching a squire's sons in the squire's house. The nonjuring church consecrated its own bishops from 1693 and maintained a separate succession into the eighteenth century. Its numbers were never large. Its transmission ran through families and households, which is exactly where formation runs best.

Sixty years after the landing at Torbay, a Stuart army reached Derby. The rising of 1715 and the rising of 1745 are the subject of a later module and their politics were not simply a matter of what people had been taught as children. But the geography is suggestive and should be recorded: Jacobite strength lay disproportionately in the parts of the archipelago where a counter-formation had held the field — the episcopalian north-east of Scotland and the Highlands, and pockets of Catholic and high-Tory gentry in Lancashire and the north of England. That is a correlation and not a demonstration, and this module flags it as such. What can be said without overclaiming is the structural point: an order that leaves an apparatus running which teaches that resistance to the lawful king is damnable has left in the field a machine that manufactures, every generation, a supply of people for whom its own founding was a crime. It got away with it. It should not be assumed that getting away with it was inevitable.

Scotland, where formation was built at the landowners' expense

Now the comparison that makes the module, because the same crown in the same decade did the opposite thing a few hundred miles north.

The Scottish settlement removed episcopacy in 1690, restored Presbyterian church government, and turned out the episcopalian clergy — comprehensively in the south and west, patchily and with much local resistance in the north-east. That was a change of personnel in the formation apparatus, and a large one.

Then, on 9 October 1696, in the middle of the famine decade Scots remember as the seven ill years, the Parliament of Scotland passed the Act for the Settling of Schools, and its provisions should be read as a piece of institutional engineering rather than as a pious aspiration.

In every parish without a school and a paid schoolmaster, a school was to be founded and a schoolmaster appointed, on the advice of the heritors — the landowners — and the parish minister. The heritors of every congregation were to meet and provide a suitable house for the school and an annual salary for the schoolmaster of between one hundred and two hundred merks, and a new tax on heritors and liferenters was to be laid to pay for it, with tenants liable to their heritors for half the assessment on the land they used. If a majority of heritors could not agree, any five of the commissioners of supply were empowered to do it for them and to assess the tax themselves. If the tax was not paid, the debt was doubled, letters of horning issued, and the debt redoubled thereafter. Vacant stipends could be redirected to fund it. The sheriff was empowered to enforce.

Read that as an expenditure. A settlement three years old, in a poor country in a famine, compulsorily taxed its own landed class — the very class whose support it needed — to put a schoolmaster in every parish, and armed the statute with a mechanism for doubling the debt of anyone who would not pay. And the schools were supervised by presbyteries, so the schoolmaster answered to the Kirk, which meant the children were formed alongside the Shorter Catechism, the kirk session's discipline, and examination before communion.

Apply the diagnostic. Force never pays for what it does not need. The Scottish settlement paid a large, avoidable, deeply unpopular cost to install a formation in the whole population, and the English settlement paid nothing at all.

So the two settlements needed different things, and the difference is legible in the statutes. England's arrangement rested on the interests of a propertied few and required nothing from the many but non-interference. Scotland's arrangement had been imposed by a Convention of Estates on a country containing a large, articulate and hostile episcopalian minority, and its warrant was a declaration that James had *forfeited*

the crown — a claim made by the estates, on the people's behalf, with no divine descent to fall back on. A settlement whose title rests on the estates needs a people who believe in the estates. A settlement whose title rests on providence, ancestry and ancient right, defended by men with deeds, does not need the ploughman at all.

That is the diagnostic in its most usable form, and this case supplies it in a controlled comparison — one monarch, one decade, two kingdoms, two policies:

Measure what an order alters in the catechism and the calendar, and you have measured whose belief it needs. The size of the alteration is the size of the requirement.

England altered one clause of one annual service and needed nobody's belief. Scotland rebuilt the clergy, taxed the landowners and put a school in every parish, and needed everybody's.

Ireland, where the incumbent formation was made a crime

And the third kingdom did a third thing, which the collection has not previously seen done in this form, and which produced a result the framework should now be able to predict.

The Education Act of the Irish parliament of 1695, *An Act to restrain Foreign Education*, opens with a preamble that is, so far as this study can tell, the clearest statement of the framework's own doctrine of formation ever written into a statute. It recites that many subjects of the kingdom have been accustomed to send their children and other persons under their care into France, Spain and other foreign parts to be educated, instructed and brought up —

> *by means and occasion whereof, the said children and other persons have in process of time engaged themselves in foreign interests, and have been prevailed upon to forget the natural duty and allegiance due from them to the Kings and Queens of this realm, and the affection which they owe to the established religion and laws of this their native country, and returning so civilly disposed into this kingdom, have been, in all times past, the movers and promoters of many dangerous seditions, and oftentimes of open rebellion*

Whoever forms the child determines, in process of time, his allegiance, his affections, and whether he rebels. The Irish parliament did not need this framework to work that out; it wrote it into law and attached penalties. A person sending a child abroad, and the person sent, were on conviction disabled from suing in any court, from being guardian or executor, from receiving any legacy, and from bearing any public office, and forfeited their lands and estates for life.

The same statute closed the domestic channel. Its second preamble uses the grammar of experience — that it has been found by experience that tolerating papists keeping school or instructing youth in literature is one great reason so many of the natives continue ignorant of the principles of the true religion — and enacts that no person of the popish religion shall publicly or in private houses teach school or instruct youth in learning within the realm, on pain of twenty pounds and three months' imprisonment for every offence.

Two years later the Banishment Act required every Catholic archbishop, bishop and regular of the clergy out of the kingdom by 1 May 1698, with twelve months' imprisonment and expulsion for remaining or returning, and high treason for a second offence. That removed, in one instrument, the ordination pipeline and the teaching orders.

Now the thing that is not in the statutes: a replacement. Nothing was built. There was no parish school system for the Catholic majority, no charity foundation of any scale, no attempt to form these children into anything else. The Charter Schools, which were the belated proselytising answer, are a creation of the 1730s and never had the reach to matter. The Irish settlement of the 1690s prohibited the incumbent formation of three-quarters of the population and put nothing whatever in its place.

What happened is the mechanism this module opened with, running in its harshest available form. There is no unformed person. Catholic instruction did not stop; it went out of doors. The hedge schools — schoolmasters teaching in ditches, barns, cabins and behind hedges, paid in pennies and provisions — carried Latin, arithmetic, English and the catechism through the eighteenth century. Enforcement was uneven and in places savage: schoolmasters were fined and imprisoned, and rewards were paid to informers who convicted them; as late as 1740 a judge in Cork was urging a grand jury not to wait for information but to present offending schoolmasters on their own knowledge.

And here is the finding, which corrects and sharpens what the corpus already held.

Kenya withheld formation and found the incumbent formation holding the field. Ireland did something harsher, and got a result that is not merely harsher but *different in kind*: it criminalised the incumbent formation and supplied no replacement, and the incumbent formation did not merely continue — it acquired something it had not previously had.

A formation that is simply left alone continues, and it continues as ordinary life: this is what everyone does. A formation that is punished acquires a **boundary**, and a boundary is the strongest single thing a formation can be given. Once transmitting it carries a fine and three months' imprisonment, teaching becomes an act of loyalty

rather than a job; once receiving it is illegal, being taught becomes an initiation rather than a schooling; and the framework installed comes with a permanent structural fact attached to it — that the state is the thing outside the hedge. A child taught his catechism in a ditch by a man risking prison has learned two things, and the second one was not in the syllabus.

Stated for the card: **prohibition without replacement does not weaken a formation; it hardens it, because it converts instruction into fidelity and supplies the framework with a boundary it could not have generated for itself.** Where a study finds an order criminalising a population's formation while building nothing to replace it, it should expect that population's formation to emerge from the period stronger, more self-conscious, and more explicitly defined against the state than it went in — and should date the beginning of that definition to the prohibition rather than to any later grievance.

Two centuries of Irish history are more legible through that sentence than through any column in the extraction ledger.

The observances that were installed, and who installed them

There is one more thing to establish, and it is the answer to the question of what the Revolution put into anybody's formation, ever.

In England, in the 1690s, essentially nothing. One clause added to an existing service on an existing day.

In Ireland, the Protestant interest did acquire annual observances in this period, and it is worth noticing which ones. The early commemorations were the twenty-third of October, the anniversary of the rising of 1641, and the fourth of November, William's birthday. Both faded by the end of the eighteenth century. The dates that mattered first were a massacre and a birthday: a commemoration of a threat survived and a commemoration of the man who ended it. Not a doctrine. A possession, and the danger it had been in.

The Twelfth of July, which now carries the whole meaning of these events in the north of Ireland, is not a creation of the 1690s at all. It began as a commemoration of Aughrim, fought on 12 July 1691 by the old calendar, and later absorbed the Boyne; the Orange Order that carries it was founded in 1795, a century after the war it commemorates. From the 1780s the principal Dublin celebrations of the Williamite victories were held on the first of July rather than the twelfth.

That is the Architect and the Inheritor running forward, and it should be named as such. The most powerful annual formation event to come out of this settlement anywhere in the three kingdoms was built by inheritors a century after the founding,

out of a battle rather than a doctrine, by men who had a completed possession to defend and a use for defending it — and it was then attributed to the founding. The founders installed almost nothing. Their descendants installed a great deal and dated it back.

And the same operation, more gently, produced the thing an Englishman now believes about 1688. On the evidence of the 1690s, the Revolution put nothing into what it was to be a good Englishman. The child catechised in 1700 was formed exactly as the child catechised in 1680 had been: to honour and obey the King and all that are put in authority under him, to order himself lowly and reverently to all his betters, and to do his duty in the state of life to which it had pleased God to call him. The Glorious Revolution as an item of English self-understanding — the bloodless English genius for orderly liberty, the constitution that other nations envy — is not in the formation of that period, because there was no formation of that period. It was assembled afterwards, by people with a settled fact to explain and reasons of their own for explaining it that way, and driven into English children through nineteenth-century schoolrooms and histories rather than through seventeenth-century catechisms.

The collection's discipline applies with full force here and must not be softened. That a thing was built later does not make it false, and it does not make the people who hold it dupes. A built thing that became real is more durable than any lie, and the English conviction that their constitution was won by a peculiarly English sort of prudence became genuinely real, and did real work, and was believed by men who would have paid a great deal to defend it. Naming the date of its construction is not debunking it. It is only refusing to let the construction be backdated to a period in which the record shows it did not exist.

Reading formation against the framework

The contribution is a diagnostic, and the three kingdoms of this case supply an unusually controlled demonstration of it.

What an order alters in the catechism and the calendar measures whose belief it needs. The size of the alteration is the size of the requirement.

One crown, one decade, three settlements, three formation policies, and each policy is a direct statement about the constituency the settlement was actually resting on.

England altered nothing. One clause added to one annual service; a comprehension scheme allowed to die in Convocation; the Catechism, the state services, the homilies and the licensing of schoolmasters left exactly as the Restoration had left them. Force never pays for what it does not need, and this settlement paid nothing, because what it needed from the mass of Englishmen was the excise and their indifference and it had

both. This yields the corpus's fifth condition of a formation apparatus in a new order's hands, to set beside kept, lost, withheld and relinquished: **inherited intact and left running unaltered, hostile clauses and all** — survivable precisely and only where the order does not require the belief of the people being formed, and carrying the standing risk that the untouched machine goes on manufacturing, every generation, people for whom the founding was a crime.

Scotland built. Episcopalian clergy purged, Presbyterian government restored, and in 1696 a compulsory tax on the landed class in a famine year to put a schoolmaster in every parish, enforceable by doubling and redoubling the debt of those who would not pay. That is a large, avoidable, unpopular expenditure on the formation of a whole population, and by the revealed-preference test it says that the Scottish settlement needed the conviction of the Scottish people. Which follows from its own warrant: a crown declared forfeited by the estates rests on the estates, and the estates rest on the people.

Ireland prohibited and built nothing, and produced the finding that corrects the corpus. The withholding observed in Kenya leaves the incumbent formation in undisturbed possession, and that is bad enough. Criminalising the incumbent formation while supplying no replacement does something worse and different: it hardens the formation it attacks, because a prohibition converts instruction into fidelity and hands the framework a boundary it could never have manufactured for itself. **Expect a population whose formation is punished and not replaced to emerge more cohesive, more self-conscious and more sharply defined against the state than it went in, and date that definition to the statute rather than to any later grievance.**

Two smaller observations attach.

The first is a caution about reading the absence of change as the absence of formation. Nothing was installed in England in the 1690s, but the machine did not stop; it went on running the Restoration's programme, which is why the settlement was still, two generations later, facing armies raised on the doctrine that its own parish churches were teaching. **An untouched apparatus is not a neutral one. It is the previous order's apparatus, still working.**

The second is the inheritors' installation, which this case shows with unusual clarity because the dates are known. The commemorations that now carry the meaning of 1688 — the Twelfth in Ireland, and in England the whole nineteenth-century construction of a bloodless national genius for liberty — were built long after the event by people who needed them, out of materials the founders had not chosen, and were then attributed to the founding. The collection has watched inheritors write their own

revisions into a founder's mouth in half a dozen cases and has generally met the operation in texts. Here it is visible in a calendar, which is the more powerful medium, because a text must be read and a day arrives whether or not anybody has read anything.

A note on sources. Quoted exactly from public-domain primary texts: the Catechism of the Book of Common Prayer of 1662, at "My duty towards my Neighbour, is to love him as myself" through "to do my duty in that state of life, unto which it shall please God to call me"; the title of the state service for 30 January, at "A Form of Prayer with Fasting ... may at any time hereafter be visited upon us or our posterity"; the Irish Education Act 1695 (7 Will. 3 c. 4 (I)), *An Act to restrain Foreign Education*, at the preamble "by means and occasion whereof, the said children and other persons have in process of time engaged themselves in foreign interests" through "the movers and promoters of many dangerous seditions, and oftentimes of open rebellion", at the disabling provisions of section 1, at the second preamble "Whereas it has been found by experience that tolerating ... Papists keeping school or instructing youth in literature", and at "no person of the Popish religion shall publicly or in private houses teach school, or instruct youth in learning within this realm"; and the provisions of the Scottish Act for the Settling of Schools of 1696, given from the text in the *Records of the Parliaments of Scotland*.

Paraphrased and credited to modern scholarship or drawn from the standard reference literature: the composition and failure of the Royal Commission on the liturgy of 1689, its survival in manuscript at Lambeth and the Commons motion of 1854; the amendment of the 5 November service to include thanksgiving for the Revolution; the scope of the Toleration Act and the rise of the dissenting academies; the Schism Act of 1714 and its repeal; the nonjuring schism and the subsequent careers of deprived clergy; the Scottish ecclesiastical settlement of 1690 and the removal of episcopalian ministers; the Banishment Act 1697; the hedge schools and the enforcement of the education penal laws; the foundation of the Society for Promoting Christian Knowledge in 1698 and its charity-school work, which lies at the edge of this study's period and is noted rather than assessed; and the history of the Irish Protestant commemorative calendar, including the early prominence of 23 October and 4 November, the origin of the Twelfth as a commemoration of Aughrim, the preference for 1 July in Dublin from the 1780s, and the foundation of the Orange Order in 1795.

Contested and uncertain points are flagged. The relation of the homily against disobedience and wilful rebellion to the enumerated list in Article 35 of the Thirty-Nine Articles is not straightforward, since that homily was added to the Book of Homilies after the Second Book was enumerated; this module asserts only that it was

printed with the Homilies and read in churches, and the point should be checked before compilation. The number of nonjuring clergy is given as about four hundred and of bishops as eight or nine, the counts differing between sources. The suggestion that the geography of Jacobite support tracks the geography of surviving counter-formation is stated here as a correlation worth noting and explicitly not as a demonstration; the politics of 1715 and 1745 had many other causes and belong to a later module. The extent to which the Scottish parish-school system was actually in place by 1700, as against enacted in 1696, is disputed; the network was largely complete in the Lowlands by the end of the century and remained thin in the Highlands, and this module does not assert delivery. The claim that the Charter Schools never achieved significant reach is the standard scholarly view and lies outside this study's period. Finally, the assertion that nothing of the Revolution entered English formation in the 1690s rests on the absence of change in the liturgical and catechetical record; absence of evidence in a single channel is weaker than positive evidence, and a study with access to school texts, chapbooks and almanacs of the 1690s might qualify it. Every load-bearing fact in this module is to be re-verified against a primary or standard source before it is built upon.

MODULE 5

By Persons Unknown to Him

The cost column — why an ordinary Englishman obeyed an arrangement he had no part in making and no reason to think permanent; the tax that put a stranger in his house and the settlement that abolished it; a country with no police, in which every enforcer was a neighbour; and the two kingdoms where the ledger reads entirely differently

Whose ledger this is, and why this case makes the question harder

This module is not about the hierarchy. It is about the people underneath it, and they are not one stratum but many: the ploughman and the cottager, the weaver in the Norwich lanes and the collier in the Tyne pits, the seaman in a Devon port, the London porter, the tenant on an Irish holding, the Ayrshire cottar in the famine. What they have in common is that none of them was consulted about anything and all of them had to decide, every day, whether to comply.

The framework's question is a ledger. For each such person, why does the sum come out against defiance? On the benefit side: what does he get from this arrangement that he would lose without it, and does he believe it is right? On the cost side: if he refuses, who reaches him, how surely, and how badly? And across both: can he simply leave?

This case makes the question unusually hard, and the difficulty should be stated at full strength before any answer is attempted.

Within the memory of men still living in 1690, the English had seen a king put on trial in open court by his own subjects, convicted as a tyrant and beheaded in the street; a republic; a Protectorate under a general; that whole arrangement legislated out of existence and a king brought back; that king's brother succeed peacefully, then set aside the laws by proclamation and put Catholics in the army; a foreign prince land with a Dutch army; the king's own regiments dissolve without a fight; the king caught by fishermen, brought back, and then quietly allowed to run away; an assembly summoned by letters with no seal and no royal authority; and that assembly declare the throne empty and hand the crown to the invader and his wife.

Four times in forty years the arrangement at the top had been publicly demonstrated to be reversible. Whatever awe attaches to kingship as such had been dismantled in front of the whole population, repeatedly, by the people at the top themselves. If there has ever been a European population entitled to conclude that the

government was arbitrary, contingent, and none of its business, it is the English population of the 1690s.

So this module cannot reach for the comfortable answer. It cannot say that Englishmen obeyed because they believed the settlement was rightful, because the settlement had been in existence for eighteen months, most of them could not have said what it was, and its own parliament had spent three weeks arguing about which Latin word covered it. The compliance is real and nearly total and it has to be explained by something else.

The benefit column, and the one thing that was actually delivered

Begin with what the ordinary Englishman got, because the answer is smaller than one might expect and one item in it is very large indeed.

The searchers were taken out of his house.

The hearth tax, imposed in 1662 to close the gap in the Restoration revenue, was levied at two shillings a year on every hearth, payable in two instalments, and it had one feature that no other English tax possessed: to assess it, somebody had to come inside. Statutes empowered a crown surveyor, with a constable and two other inhabitants of the parish, to view the inside of every house. Bricking up a fireplace to escape it was punished by a double charge. It was the most hated tax in England, and it was hated less for its weight — the very poor were exempt, and it fell hardest on middling householders — than for the chimney-man at the door.

The parliament of 1689 abolished it, and the words it used are the reason this module has its title. Hearth money, the statute declared, was

> *not only a great oppression to the poorer sort, but a badge of slavery upon the whole people, exposing every man's house to be entered into, and searched at pleasure, by persons unknown to him*

and, to erect a lasting monument of their Majesties' goodness in every house in the kingdom, the duty was taken away and abolished.

Read that sentence as the settlement's own account of what an ordinary Englishman minded, because it is unusually direct testimony and it comes from the people who were about to tax him more heavily than any government in English history. It does not say the tax was too high. It says the tax was a *badge of slavery*, and it locates the slavery precisely: in the entry, at pleasure, by persons unknown to him.

And that phrase is the key to the whole module. The state the ordinary Englishman resented and resisted was the state of strangers. The state he obeyed, as will appear, was the state of neighbours.

What replaced the hearth tax was a land tax assessed on landowners and an excise collected at the brewery, the salt pan and the customs house. The total burden on the country rose steeply and continuously through the 1690s to pay for the war against France — far above anything the Stuarts had raised. But the point of collection moved off the threshold of the ordinary house, and the ordinary man's beer got dearer instead of his door being knocked on.

That yields the module's first finding, and it generalises well beyond this case. **The point of collection matters more to compliance than the incidence.** A heavier tax gathered invisibly, at a chokepoint the payer never sees, buys more compliance than a lighter tax gathered at the door by an official the payer does not know. The framework already holds that the medium of payment is the operative clause of a tax instrument and that the direction a tax pushes the body is its real purpose. This adds a third question to ask of any levy: *where does the collector stand when he takes it?* — because that, and not the rate, is what the payer will remember and what he will riot about.

The rest of the benefit column is thinner but real.

For Protestant dissenters — several hundred thousand people — the Toleration Act ended prosecution for worship. A Baptist in Bedfordshire could now meet lawfully in a registered house with a licensed preacher, provided the door was unlocked and he had taken the oaths. He was still shut out of office, the corporations and the universities, and still paid tithes to a church he did not attend. But he was no longer a criminal for going to his own chapel, which is not nothing, and the people it applied to knew exactly what it was worth.

For everyone, the parish was untouched. The calendar was untouched, the liturgy was untouched, the alehouse and the wake and the maypole were untouched. Nothing was taken away from the ordinary man's year, which is a benefit of the kind that is invisible until you compare it with the alternative — and the alternative was in living memory, when a government abolished Christmas on the ground that festival days had no warrant in the Word of God, and put major-generals into the counties to enforce a reformation of manners.

The poor law went on running, and running locally. For a labourer in old age, in sickness, or with too many children, the parish vestry and the overseer of the poor were the only thing standing between him and starvation, and they were the most important institution in his life by a wide margin. The Revolution did not touch them. Parliament legislated on the poor in 1691 and 1696 in ways that tightened

administration, but the vestry remained what it had been: local men, spending local money, on people they knew.

And there were the negative benefits written into the Bill of Rights, which are easy to over-read and should not be dismissed. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. That jurors ought to be duly impanelled and returned, and that jurors in trials for high treason ought to be freeholders. That grants and promises of fines and forfeitures of particular persons before conviction are illegal. These were declaratory rather than novel, they were routinely evaded, and they secured a subject rather than empowering him — but a man tried at the assizes in 1700 stood a measurably better chance than one tried in the west country in 1685.

That is the benefit column, and it is worth stating plainly what is not in it. There is no positive account of the settlement addressed to him. There is nothing he is asked to believe. There is no share, no franchise, no place. The arrangement made in February 1689 gave the ordinary Englishman one substantial tangible thing, took nothing from him that he could see, and did not otherwise mention him.

The cost column: who would actually come, and how

Now the other side, and it opens with a fact that governs everything else.

England had no police.

There was no gendarmerie, no rural constabulary, no corps of intendants, no political police, no standing garrison in the counties. Compare almost any continental monarchy of the period and the absence is startling. What England had instead was this: the parish constable, an unpaid office held in annual rotation by ordinary householders, who was a farmer or a tradesman doing a year's duty; the justice of the peace, who was the local gentleman, unpaid, sitting in his own parlour and at quarter sessions with his neighbours; the county militia under the lord lieutenant, who was the greatest landowner in the shire; the hue and cry, in which the parish itself was required to pursue a felon; and, behind all of it, a criminal law that was savage on paper and depended entirely on a private prosecutor being willing to bring a case and a local jury being willing to convict.

The consequence is the module's central observation and it answers the question the module was set.

The enforcer was the neighbour. The man who would arrest an English labourer was somebody he knew by name, who lived within a mile of him, who held the office because his turn had come round, and who would still be living there next year and the year after. The man who would commit him was the squire whose land he worked or

whose brother employed his son. The men who would convict him sat on a jury drawn from the same hundred. The body that paid his relief when he was old was the vestry of people he had known all his life.

That structure has three properties which together explain the compliance this module set out to explain.

It is **cheap**, because nobody is paid and the state supplies nothing.

It is **inescapable in a way a state apparatus is not**, because it does not need to find you. A man can hide from a government; he cannot hide from a village. The community enforces for free, continuously, and without instruction: the shaming, the loss of credit at the alehouse, the refusal of employment, the churchwardens' presentment, the settlement certificate withheld. A labourer who fell out with his parish lost his relief, his character and his work at a stroke, and none of that required anyone to hold a warrant.

And it is **almost completely insulated from a change of sovereign.** This is the point that matters. Not one of those offices changed in 1689. The constable was the same constable. The vestry was the same vestry. The jury was drawn from the same list. The commissions of the peace were remodelled, as they had been under Charles and under James and as they would be again, but they were remodelled by putting different local gentlemen on them, and the office and its relation to the parish were unaltered.

The answer

So: why does a man comply with an arrangement he had no part in making, has no reason to think permanent, and has watched being overturned four times?

Because he was never complying with that arrangement.

Compliance at the base is with the nearest enforcer, not with the apex. The ordinary Englishman's obedience ran to the constable, the justice, the vestry, the churchwarden, the overseer, his master and his landlord — every one of them a person he knew by name, holding an office he understood, doing what that office had always done. Who sat on the throne in Westminster was, for the operation of any of it, close to irrelevant. His obedience was not transferred from James to William, because it had never been lodged with James in the first place. It was lodged with the parish, and the parish had not moved.

This is why an event that looks, from the centre, like a total rupture produced no measurable change at all at the base. And the proposition is testable, because the same country ran the experiment in reverse within living memory. The Protectorate's major-generals, from August 1655, put a soldier over ten districts of England and set beside him local commissioners chosen for demonstrated affection to the government —

which is to say, it changed the *local* enforcer. That was felt in every county, resented immediately, and remembered for a century, and it was a far smaller constitutional event than the removal of a king. A reform that changes the man who comes to your door is felt more sharply than a revolution that changes the man on the coin, however trivial the first looks from the centre and however enormous the second.

Stated for the card: **an order can survive a complete replacement of its apex with no loss of compliance at the base, provided the local enforcement structure is untouched — because the base was never complying with the apex.** The corollary is the practical one: where a new order needs to change something at the base, it must reach through that local structure, and the moment it does so it becomes visible and expensive in a way the change of sovereign was not.

And there is a corollary about the cost column itself. In a country with no police, the cost column is not filled from the centre at all. It is filled by neighbours. That makes it cheap, self-financing and extremely difficult for any regime to disturb — and equally difficult for any regime to *use*. A government that wants something the neighbours do not want cannot get it, which is the underrated other half of the same fact, and which is why the English state of the 1690s could raise unprecedented sums through the customs house and could not, for example, have enforced a religious uniformity that the parish had stopped believing in.

The state of the two dials

The framework reads the ordinary subject's position off two dials: how credible the enforcing force is, and whether exit is available. Both need setting here, and the second is more complicated than usual.

Credibility. The English criminal law of the 1690s was capital for a long list of felonies, mitigated by benefit of clergy, by juries that undervalued stolen goods to avoid hanging a man, and by transportation. It was ferocious in individual instances and erratic in aggregate, and its erratic quality was structural rather than accidental: it depended on a victim willing to prosecute at his own expense and a jury of neighbours willing to convict. That produces a cost column which is genuinely credible — everybody had seen a hanging — but which is administered by the community rather than at it, and which therefore tracks what the community thinks rather than what the government wants.

The one exception, and it is a large one, was the sea. The war against France from 1689 required seamen in numbers the navy could not obtain by volunteers, and it took them. Impressment was the single thing the Williamite state did to ordinary Englishmen by direct physical force, and it did it at scale, in the port towns and on the

merchant ships, for the whole of the reign. A seaman in Wapping or Plymouth lived under a standing threat of being seized and carried off for years, with his wages in arrears and his family on the parish. That is the true cost column of this settlement as it touched the men it touched hardest, and it is worth setting beside the constitutional achievements without softening either.

Exit. Internal movement was legally restricted for the poorest by the Settlement Act of 1662, which made a man's parish of settlement the parish liable for his relief, and allowed a parish to remove a newcomer back to it. A labourer arriving in a new parish could be sent home unless he could rent ten pounds a year or give security, and settlement certificates were the document that made a poor man portable. How tightly this bound in practice is disputed among historians, and a later statute amending it said in terms that the certificate system had been found very ineffectual. But its existence is a fact about the ordinary man's field of the possible: for the poorest Englishman, moving was a matter requiring somebody else's paper.

External exit was real and was used. Emigration to the American and Caribbean colonies, very largely as indentured servants, ran continuously; the merchant marine took men out; London took them in; and the army and navy were both an exit from a village and a very bad bargain once taken.

And in Ireland, the settlement deliberately opened a door, which is unusual enough to be a finding in itself. The Treaty of Limerick in October 1691 permitted the Jacobite army to leave for France with its arms and colours, and something in the region of twelve to fourteen thousand soldiers went, with several thousand women and children — the figures vary between accounts and should be read as a range. Around a thousand took service with the Williamites and about two thousand went home.

Read structurally, that is a purchase. The Williamite settlement in Ireland faced a defeated population it had no intention of forming, no means of co-opting, and every intention of dispossessing — and it bought its own security by exporting the fighting men rather than by killing or containing them. The Menu's *Export* family has been described in this collection as a solution to the surplus of ambitious claimants inside a ruling class. Here the identical move is run on the losers: **an order that cannot form or co-opt a defeated population can still buy security by exporting its fighting men, and should be expected to prefer that to the alternatives, because it is cheap, immediate and paid for by somebody else's army.** The price was that those men and their sons spent the next sixty years in French service looking for a way back, and were present at Fontenoy and in the Jacobite risings.

Where the settlement did reach the base, and what happened there

The proposition that the ordinary Englishman was outside the arrangement can be tested, because there were three occasions in this decade when the state reached past the parish and touched him directly, and in each case the reaction tells you what he actually cared about.

The excise. The duties on beer, malt, salt, leather and coal rose steeply and repeatedly through the 1690s to fund the war. This was the settlement's real demand on the ordinary man and it was paid weekly, in small sums, by people with no vote. It was collected from brewers and producers rather than at the door, which is precisely why it was payable at all — but it was resented, evaded and smuggled around continuously, and the excise officer, who was a salaried stranger with powers of entry to business premises, became one of the most disliked figures in English life for the next century and a half.

The recoinage. In January 1696 parliament passed the Act for Remedying the Ill State of the Coin of the Kingdom. By then something approaching half the silver had been clipped out of the circulating coin. The remedy chosen — on a plan associated with Locke, against the devaluation urged by Lowndes — was to call in the old hammered money and recoin it to the old standard, and clipped coin ceased to be legal tender or acceptable for taxes, with a deadline in July. Some £6.8 million of silver was recoined between 1696 and 1699.

For a man paid in silver, this was a catastrophe arriving through no fault of his own. Small coin vanished from circulation while the recoinage ran; wages could not be paid; markets seized. The state had reached into the pocket of every person in England simultaneously, and it had done so not by taxing but by changing what money was.

The weather. The 1690s were, on tree-ring evidence, the coldest decade in Scotland for seven hundred and fifty years, and harvest failure ran across northern Europe. In England it meant dear bread and local disorder. In Scotland it meant the seven ill years — failed harvests in 1695, 1696, 1698 and 1699, an old poor law overwhelmed, migration between parishes and emigration to Ulster, England and the colonies, and mortality that is genuinely disputed and was certainly severe.

Now notice what is on that list and what is not.

The ordinary Englishman's grievances in the 1690s were bread, coin, the excise and the press gang. None of them is constitutional. Nobody rioted about abdication, or about the vacancy of the throne, or about whether the crown was elective. The

settlement's own great questions were entirely absent from the disturbances of the decade in which it was made.

That absence is the strongest single piece of evidence in this module. A population that is inside an arrangement quarrels with it about the arrangement. A population that is outside one quarrels about bread. The English common people of the 1690s were outside, they knew it, and their compliance was not consent to the settlement but indifference to it — which was all the settlement required, and all it asked for.

The two other kingdoms, where the ledger reads differently

Scotland. The famine dominates everything, and a settlement three years old presiding over four failed harvests should on the framework's ordinary reasoning have been in serious danger. It was not, and the reason belongs partly to another module: the Scottish settlement was building a formation apparatus at the landowners' compulsory expense in exactly those years, and its kirk sessions were the poor relief, the discipline and the school in one institution. Its cost column at the base ran through the same channel as its benefit column, and both were the Kirk. That is a much more integrated arrangement than England's and it needed to be, because the Scottish settlement had actually asked its people for something.

In the Highlands the ledger was different again and the enforcement was of a different kind. The garrison at Fort William, the requirement that clan chiefs swear allegiance by a deadline, and — in February 1692 — the killing of the MacDonalds of Glencoe by soldiers quartered on them, after a chief's oath had been taken late. The accounting of that belongs to a later module. What belongs here is only its function in the cost column: the state had demonstrated that it could kill a small clan in its own houses for a procedural failure, and everybody in the Highlands knew it.

Ireland. Here the framework's ordinary reading applies without complication, and it is the sharpest thing in the module.

For the Catholic majority the benefit column was empty. Land was going from about a fifth of the country to about a seventh. Office was closed, the professions were closing, the parliament was closed, the corporations were closed. And the cost column was held high by a body of statute enacted in the same decade: the Education Act of 1695, prohibiting Catholic teaching at home and Catholic education abroad; the Banishment Act of 1697, removing the bishops and regular clergy; and the Act to Disarm Papists of 1695, which forbade Catholics to keep arms, empowered officials to search the houses and businesses they suspected of holding them, and allowed the seizure of any horse worth more than five pounds.

Now set that beside the sentence this module is named for.

In 1689 the English parliament abolished a tax on the express ground that exposing every man's house to be entered into and searched at pleasure by persons unknown to him was *a badge of slavery upon the whole people*.

In 1695 the Irish parliament enacted that a Catholic's house might be entered and searched for arms.

Two parliaments, six years apart, in two kingdoms under one crown. The first states, as a principle so obvious it needs no argument, that a searchable house is the mark of a slave. The second makes three-quarters of a population's houses searchable by law. And the Bill of Rights, which is the founding instrument of the first parliament's settlement, had already written the distinction on its own face: *that the Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law.*

The collection has established that a tax assessed per head has been the mark of subject status for two millennia. This case adds a second and older marker, and it is a better one because it does not require a fiscal system to read: **searchability.** Ask, of any order, whose house may be entered without his consent and whose may not, and you have the boundary of the settlement drawn more precisely than any franchise or tax roll will draw it. The men who abolished the hearth tax knew exactly what they were saying. Six years later, across the Irish Sea, men of the same religion and the same political persuasion enacted the thing they had condemned, against a population they did not propose to admit.

Reading the cost column against the framework

The principal contribution is a correction to how this module should be read in any case with a functioning local society.

Compliance at the base is with the nearest enforcer, not with the apex. The ordinary subject's ledger is not drawn up against the government; it is drawn up against the constable, the magistrate, the vestry, the landlord and the neighbours, because those are the people who can actually reach him and they are the only people who ever have. It follows that:

An order can survive a complete replacement of its apex with no loss of compliance at the base, provided the local enforcement structure is untouched. England in 1689 is a controlled demonstration: total rupture at the top, no measurable change at the bottom, because none of the offices that touched an ordinary man changed hands or changed function.

Conversely, a reform that changes the local enforcer is felt more sharply than a revolution that changes the sovereign. The major-generals of 1655 are the control, and they were remembered longer and more bitterly than the events of 1688.

And in an order with no police, the cost column is filled by neighbours, which makes it cheap and immovable and also unusable. A regime that wants something the parish does not want has no instrument with which to get it, which is why the same state that raised unprecedented war revenue through the customs house could not have enforced anything at all inside a village.

Three findings compound.

The point of collection matters more than the incidence. The hearth tax was light and hated; the excise was heavy and paid. The difference was where the collector stood. To the two questions this framework already asks of a tax instrument — what may it be paid in, and where must the payer go to earn that — add a third: where does the collector stand when he takes it? A levy taken at a chokepoint the payer never visits is politically cheap almost regardless of its weight; a levy taken at his door is expensive almost regardless of its lightness.

Searchability is a marker of subject status, and a sharper one than the poll tax. Ask whose house may be entered without his consent. The English parliament of 1689 named it in terms — a badge of slavery — while abolishing it at home, and the Irish parliament of 1695 imposed it on the Catholic majority, and the Bill of Rights had already limited the right to arms to Protestants on its face. Where a study needs the boundary of a settlement drawn precisely, this line will draw it faster than a franchise or a tax roll.

Export can be run on the losers. The Menu's *Export* family has been described as a discharge for a surplus of ambitious claimants inside a ruling class. The Treaty of Limerick shows the same move used on a defeated population's fighting men — twelve to fourteen thousand of them shipped to France with their arms — by an order that had no intention of forming them and no means of co-opting them. It is cheap, immediate, and paid for by a foreign treasury, and its cost falls in the next generation, when the exported men and their sons come back looking for a way in.

A closing discipline, because this module has argued that the settlement was cheap at the base and that must not be allowed to sound like praise.

It was cheap because it demanded almost nothing from the people underneath it, and it demanded almost nothing because they were not part of it. The framework's rule is that the robe is cut for the ruled who must believe and not for the ruled who are merely contained, and that where an apex secures its position and spends nothing further on legitimation toward a population, the silence is itself a finding. The silence

here is total. Nothing was said to the English common people about the Revolution because nothing needed to be; their excise was collected at the brewery and their obedience was collected by their neighbours, and neither transaction required their opinion.

And where the settlement did need something it could not get that way, it took it by force from the people least able to refuse: seamen pressed out of port towns for a war they had no voice in, and an Irish Catholic majority disarmed, unschooled, dispossessed and made searchable in their own houses by statute. The cheapness of the English column and the weight of the Irish one are not two different facts about two different places. They are the same settlement, seen from two positions in it.

A note on sources. Quoted exactly from public-domain primary texts: the preamble to the Act repealing hearth money, at "not only a great oppression to the poorer sort, but a badge of slavery upon the whole people, exposing every man's house to be entered into, and searched at pleasure, by persons unknown to him", and at "to erect a lasting monument of their Majesty's goodness in every house in the kingdom"; and the arms clause of the Bill of Rights, at "that the Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law", from *Statutes of the Realm* as reproduced at legislation.gov.uk. The clauses of the Bill of Rights on excessive bail, excessive fines, cruel and unusual punishments, the impanelling of jurors, the freehold qualification of jurors in treason trials, and grants of fines and forfeitures before conviction are from the same source. The title of the Act for Remedying the Ill State of the Coin of the Kingdom of January 1696 is given as commonly cited.

Paraphrased and credited to modern scholarship or drawn from the standard reference literature: the operation, incidence and unpopularity of the hearth tax and the powers of entry attached to it; the structure of English local government and law enforcement in the period, including the parish constable, the commission of the peace, quarter sessions, the militia and the poor law; the Settlement Act of 1662 and the settlement certificate system, together with the later statutory acknowledgement that it had proved ineffectual; the growth of the excise through the 1690s; the recoinage crisis of 1695–96, the debate between Lowndes, Locke and Newton, the demonetisation of clipped coin and the total silver recoined; the seven ill years in Scotland, the tree-ring evidence for the decade's cold, and the pattern of migration and emigration that followed; the terms of the Treaty of Limerick permitting the Jacobite army to withdraw, and the Flight of the Wild Geese; the Irish disarming, education and banishment statutes of 1695 and 1697; and the rule of the major-generals from August 1655, as established in the companion study of the Protectorate.

Contested and uncertain points are flagged, and this module has more of them than its predecessors. The numbers leaving Ireland under the Treaty of Limerick are given as a range: accounts variously state 14,000 soldiers, 12,000, or 10,000 soldiers with 4,000 women and children, with about 1,000 taking Williamite service and about 2,000 going home, and no figure here should be treated as settled. Mortality in the Scottish famine of the 1690s is genuinely disputed and no figure is asserted. The scale and mechanics of naval impressment in the 1690s are described here in general terms because no reliable series was obtained; the proposition that impressment was extensive and coercive is not in dispute, but no numbers are given and none should be inferred. The claim that England had effectively no police is a standard characterisation of a real institutional absence and is not intended to deny the existence of watchmen, informers or the machinery of the excise. The assertion that no disturbance of the 1690s was constitutional in character rests on the general pattern reported in the literature rather than on a systematic survey of riots for the decade, and a study with access to assize and quarter sessions records might qualify it; it is the load-bearing negative claim of this module and should be tested first. The excise rates through the decade are described as rising steeply without figures, which belongs properly to the extraction module. Every load-bearing fact in this module is to be re-verified against a primary or standard source before it is built upon.

MODULE 6

Upon Beere Ale and Other Liquors

Extraction — a state that doubled its take and then spent half as much again on top of it; a parliament that voted six hundred thousand pounds to reimburse a foreign republic for the cost of invading England; a third kind of extraction the framework does not yet have; and the founding statute of the Bank of England, which is on its face a tax on beer

The scale of what changed

Take the arithmetic first, because it is the largest single discontinuity in this study and everything else in the module is an answer to it.

James II's revenue, at the end of a long trade expansion and after his parliament had voted him everything his brother had enjoyed and added duties on top, ran at something under two millions a year. That was enough to keep a court, a small standing army, a navy and a civil administration, and enough — as the landscape established — to let a king govern for four years without meeting a parliament at all.

Within five years the English state was spending more than five and a half millions a year, and its tax revenue, itself nearly doubled, was reaching only about three and a half. The gap ran at two millions a year and it ran for eight years. Estimates of the total cost of the Nine Years' War to England vary widely with what is counted; the figures in circulation for the whole period of William's wars run to many tens of millions. What is not in dispute is the shape: the state's ordinary take roughly doubled, its expenditure went up by a factor of three, and the difference was borrowed.

By the peace of 1697 there was a national debt of something between fourteen and a half and sixteen and a half millions, on figures that differ between authorities, and the interest on it was consuming something like a third of the government's expenditure.

Nothing in the constitutional documents of 1689 anticipates any of this. The Declaration of Rights complains about the levying of money without grant of parliament; it says nothing about how much money, and nobody in the Convention was imagining these sums. The fiscal revolution was not designed in February 1689. It was improvised, year by year, under the pressure of a continental war that the operation of November 1688 had been mounted to make possible.

The instruments, and who each one reached

The land tax. From 1692 a general assessment on land, revived directly from the monthly assessment invented by the Long Parliament and run through the Interregnum, levied as a rate in the pound on the annual value of land and offices. At four shillings in the pound it produced somewhere approaching two millions in a good year, and across the war it supplied around a third of all the money raised.

The single most important thing to say about it is who paid it. It fell on the landed — on precisely the men who had signed the invitation, ridden into Exeter, sat in the Convention, and voted the crown to William and Mary. The class that made the Revolution taxed itself first and hardest, at a rate no Stuart would have dared propose, and went on doing it for twenty-five years.

Apply the framework's sharpest diagnostic and the reading is unambiguous. Force never pays for what it does not need, and a propertied class that already controls the legislature does not vote four shillings in the pound on its own estates unless it regards the outcome as necessary to something it values more than the money. The land tax is the revealed-preference test in fiscal form, and what it reveals is that the English landed interest treated the war against Louis XIV and the exclusion of the Stuart line as worth a quarter of its rental income.

The excise. Duties on beer, ale, malt, salt, leather, spirits and a lengthening list of goods, collected from the producer — at the brewery, the salt pan, the tannery — by a salaried professional service that was, by the standards of the age, remarkably efficient and remarkably honest. It grew continuously through the decade and became the backbone of the fiscal state.

This is the levy that reached everybody, and it reached everybody at a point they never saw. The previous module established the principle: the point of collection matters more to compliance than the incidence, and a heavy tax gathered at a chokepoint the payer never visits buys more compliance than a light one gathered at his door. The excise is that principle applied at national scale, and the parliament that abolished the hearth tax for putting a stranger inside a man's house then raised, on the same population, several times the sum, at the brewery.

The customs, on trade, granted for a limited term and hypothecated to loans almost immediately.

And the borrowing, which is the module's real subject. The Million Loan of 1693, raised on a tontine. The Bank of England in 1694. The Million Lottery. A loan of two millions from the New East India Company in 1698 in exchange for its charter. Short-term Exchequer tallies and bills at eight to ten per cent throughout.

Six hundred thousand pounds

Before the instruments, one item that belongs in this module and is very easily read past.

In August 1689 the English parliament charged the revenues with six hundred thousand pounds to repay the States General of the United Provinces for the money the Dutch had spent on William's expedition to England.

The English taxpayer reimbursed a foreign republic for the cost of invading England.

Nothing is being insinuated by stating it. The payment was open, voted in the ordinary way, entered on the Commons' books between a bill on coffee duties and a vote of sixty thousand pounds to the servants of Charles II, and everybody involved understood it as the settling of a debt owed to allies who had rescued the kingdom. That is exactly how it was described and it is not obviously wrong.

But set it beside the manifesto of October 1688, which had promised to send back all those foreign forces as soon as the state of the nation would admit of it, and beside the Additional Declaration's insistence that the forces brought over were utterly disproportioned to any design of conquering the nation, and the transaction acquires a shape. An expedition denied to be a conquest was invoiced to the conquered, and the conquered paid, by vote, within nine months. Whatever else that is, it is a piece of arithmetic that the settlement's own account of itself does not quite accommodate, and this study's method is to put it on the page and leave the sum.

The under-funding, which was deliberate

Now the constitutional half, and it is the piece the seed correctly identified as the centre of the case.

James II's first parliament had voted him the whole of his brother's revenue for life, *nemine contradicente*, within a week of assembling, and Speaker Trevor had told him to his face that they did it without any security for their religion and relying wholly on his royal word.

The Convention and its successor did not repeat the mistake, and the record of the debates shows that not repeating it was the explicit point.

The financial settlement of 1690 gave William three hundred thousand pounds a year from the excise for life, and granted the customs — some six hundred thousand — for four years only. The figures and their exact allocation are treated differently by different authorities and should be carried as the standard account rather than as settled

fact; what is not in doubt is the structure. The crown was given a portion for life and the larger portion for a term, and the term expired.

The reasons given in the House are the valuable part. Members spoke directly of the need for frequent parliaments — a grant that runs out is a summons that cannot be ignored. One member cited James's example against granting revenue for lives at all. And Sir Christopher Musgrave argued from the need to secure a fund of credit, which is the observation that turns the whole thing from a constitutional precaution into a financial technology: **a duty granted for a fixed term, renewable by a body that must meet to renew it, is better security for a loan than a duty granted for a life, because a life ends without warning and a term ends on a known date.**

Around that sat the rest of the apparatus, built piece by piece across the decade.

Appropriation. Parliament increasingly specified in the granting Act what the money was to be spent on, so that a supply for the navy could not be spent on the army or the household.

Audit. From 1690–91 a Commission of Public Accounts, staffed by members of the Commons, with power to interrogate ministers and call for official documents. A body of legislators inspecting the executive's books is a thing English government had not previously had in any durable form.

The annual army. The Mutiny Act, which alone made military discipline lawful, was passed for limited periods and had to be renewed; and the establishment was voted yearly.

And separation. By the Civil List Act of 1698 the king was granted some seven hundred thousand pounds a year for the civil government and his household, and the rest of the revenue was, in effect, the state's rather than his. That is the moment the king's money and the country's money became two different things.

Set all of that beside the Triennial Act of 1694, which required a parliament at least every three years, and the comparison yields the module's first finding.

The Triennial Act is not what made parliament meet every year. The money is.

A statutory requirement to meet triennially is a rule addressed to a king's conscience, and the landscape of this study showed exactly what such a rule is worth: the Triennial Act of 1664 required a parliament every three years, supplied no machinery, and was simply ignored from 1681. What could not be ignored was that the customs expired, the land tax was an annual Act, the Mutiny Act lapsed, the supply was appropriated, the accounts were examined, and the war had to be paid for in the spring. A king who wanted an army in the field next season had to have a parliament sitting this winter, and there was no alternative arrangement available to him at any price.

Stated for the card: **a constitutional guarantee is worth what its enforcement machinery is worth; a fiscal dependency needs no enforcement machinery at all, because it enforces itself every twelve months.** Where a study finds an order that meets its representative body regularly, it should look first at the revenue calendar and only afterwards at the constitution.

The third kind of extraction

Now the debt, and the reason it needs a new entry on the card.

The framework currently reads extraction as a fork. Either the thing taken is a **flow** — a harvest, a rent, a tribute, labour-days — in which case the take is a rate, the rate is tunable, the extractor keeps it below the revolt threshold because he needs the producer producing next year, and the arrangement tends to an equilibrium. Or the thing taken is a **stock** — the land itself, taken whole for settlement — in which case there is no rate to tune, the taking is all-or-nothing, it produces the revolt by its completion rather than sitting a tunable distance from it, and the order tends toward elimination of the dispossessed.

A funded public debt is neither of those, and the difference is not a detail.

It is the sale of a claim on a flow that does not yet exist.

The state does not take this year what it spends this year. It sells, to those who have money now, an entitlement to a share of the taxes of the next thirty or fifty or hundred years, and spends the proceeds immediately. Four consequences follow and each of them changes the analysis this module would otherwise perform.

First, the revolt threshold stops binding on the sum spent. The framework's whole account of "just enough" assumes that what the extractor spends is what he takes, so that spending more means taking more and taking more means approaching the threshold. Break that link and the constraint disappears from the year in question. England in the 1690s spent five and a half millions while taking three and a half, and the two millions of difference imposed no present burden on anybody at all.

Second, the servicing taxes must be permanent, predictable and therefore acceptable. A creditor lending against the customs needs the customs to be there in ten years. That pushes the state hard toward levies that can be collected indefinitely without provoking anybody — which is to say, toward the excise, collected invisibly at chokepoints. The debt and the discreet tax are not two developments. The first requires the second.

Third, it converts a body of subjects from payers into holders. This is a settlement, performed in paper rather than in land. Several thousand people who previously stood in relation to the state as taxpayers now stood in relation to it as

owners of an asset issued under its statutes. What that does to their default is the subject of the next module and will not be anticipated here beyond noting that the framework's ranking of bindings — deed, by-product gain, office, debt — will have to be looked at again.

And fourth, it makes war affordable at a scale direct extraction cannot reach, which is why every state that acquired the technique used it, and why the states that did not acquire it lost.

The statute that established the mechanism states its own distribution on its face, and the long title should be read whole, because it is the module in one sentence:

> *An Act for granting to theire Majesties severall Rates and Duties upon Tunnage of Shipps and Vessells and upon Beere Ale and other Liquors for secureing certaine Recompenses and Advantages in the said Act mentioned to such Persons as shall voluntarily advance the summe of Fifteene hundred thousand pounds towards the carrying on the Warr against France*

That is the founding statute of the Bank of England, and on its face it is a duty on shipping and beer.

Unpack the transaction. Subscribers advanced twelve hundred thousand pounds of the fifteen hundred thousand and were incorporated as the Governor and Company of the Bank of England. They received eight per cent — ninety-six thousand a year — plus four thousand for management, a hundred thousand pounds annually. And the security for that hundred thousand, named in the title of the Act, is the duty on tonnage and on beer, ale and other liquors.

So: the man who drank a pot of ale in Southwark paid a duty, and the duty secured the return to the merchant who had subscribed to the Bank. The transfer runs from the consumer to the rentier, it is permanent, and it is written into the title of the statute in the plainest language anyone could ask for. Nobody hid it. Nobody needed to, because the people paying it were not asked and the people receiving it were the ones legislating.

The word in that title worth pausing on is *voluntarily*. Subscription was voluntary; the beer duty was not. In one instrument the state's relation to its propertied class became a contract freely entered, and its relation to everybody else remained what it had always been. **Where an order funds its debt, expect the language of consent to attach to the lenders and the language of duty to attach to the payers, and expect both to appear in the same sentence.**

Why 1694 worked when 1672 had failed

The technique was not new and English governments had tried to borrow before. The reason it worked now and had not worked then is the finding this module exists to produce, and it is a direct application of something the collection already holds.

In January 1672 Charles II stopped the Exchequer. The crown had been borrowing heavily from the London goldsmith bankers against the anticipated revenue, and, needing the money for a Dutch war, it suspended repayment. Several of the bankers were ruined and their own depositors with them. After that a loan to the crown was priced at what the crown's word was worth, which was not much, and the rate reflected it.

What changed by 1694 was not that the government had become more honest. William III's ministers were not more scrupulous than Charles II's, and the state was in far greater difficulty. What changed was the **warrant**.

The collection's addendum on possession and ownership states the distinction and it applies here without alteration. A man who holds by his own arm alone can convey things, but he cannot make the conveyance stick; what he issues is a licence rather than a grant, revocable by his death, and everybody who receives one prices it accordingly. Ownership — the power to convey something that stays conveyed — requires a source of title standing outside the granter's own arm, which the receiver already honours.

A king's promise to repay is a licence. It is worth his life expectancy, his temper, and his necessity, and any of the three can end it in an afternoon, as 1672 demonstrated to the goldsmiths.

A debt charged by statute upon a named duty, granted by parliament for a stated term, appropriated by parliament to that use, audited by a commission of the Commons, and administered by an incorporated company which the crown neither owned nor controlled, is a **title**. It survives the man who made it. It can be assigned and transferred — the Act says so in terms, providing that the sums may be assignable and transferable to such persons as shall freely and voluntarily accept them. It can be sold in a market. And it cannot be stopped by a king in an afternoon, because the king is not the person who promised.

That is what the seed's guess — *the debt is the settlement* — means when it is stated precisely, and it is more interesting than the guess. The point is not simply that creditors were bought. It is that **in order to borrow at all, the crown had to convert its own promises from licences into titles, and the only warrant available for that conversion was the institution the Stuarts had spent a century trying to govern without.**

The recursion is exact and worth naming. Six hundred years earlier a Norman duke with no title inside England had faced the identical problem in land: he could distribute estates by force, but a distribution by force is a licence, and licences manufacture no defenders, so he required a source of title standing outside his own arm before his followers' holdings could become their sons' inheritances — and he found it, eventually, in the crown he had made. In 1694 an English state faced the same problem in money, could not use the crown because the crown had defaulted within living memory, and found its warrant in parliament.

Whether that constitutes the warrant of the whole order moving is the question this study exists to answer and will not be answered here. But it should be recorded, precisely and with its date, that in one register the warrant demonstrably did move, that the register was credit, and that the year was 1694. **The warrant moved in the money before anybody moved it in the theory.**

Where the burden actually fell

England. The land tax on the propertied, voted by themselves. The excise on everybody, collected at the brewery. The customs on trade. And the debt, which took nothing from anybody in the present and pledged the excise of the future to a few thousand subscribers in London.

It should be said plainly that this is not a picture of an extractive state grinding a peasantry. The English rate of taxation rose to become among the heaviest in Europe, and the money went overwhelmingly into a war rather than into a court. What the distribution did was to shift a permanent charge from consumers of beer and salt onto the books of holders of government paper — a transfer upward, in perpetuity, transacted in public, by statute, with the consent of everyone who had a vote and none of the people who did not.

Scotland. A separate kingdom with its own parliament and its own much smaller revenue, in the middle of four failed harvests. Its most consequential financial event of the decade was not a tax but a subscription: the Company of Scotland, launched in 1695, raised something like four hundred thousand pounds from Scottish investors — a very large fraction of the country's liquid capital, on the standard accounts — for the settlement at Darien, and lost substantially all of it by 1700, in a venture that English commercial and diplomatic pressure had helped to strand. That is not extraction by England in any direct sense and should not be written as though it were. It is, however, the fiscal fact that mattered most in Scotland in this decade, and it belongs in the ledger of what the Revolution settlement cost Scotland, because a united crown with divided

parliaments produced a foreign policy Scotland could not influence and a commercial policy that ruined its one great venture. The Union of 1707 is downstream of it.

Ireland. Here extraction was of the older kinds and both of them ran at once. The stock was taken: something over a million acres forfeited, roughly two-fifths of it satisfying army debentures, Catholic landholding falling from about a fifth to about a seventh of the country. And a flow was established on top of it, because the Irish revenue was made to carry the cost of the military establishment that garrisoned Ireland. A dispossessed population paid for the army that held it down on the land it had lost.

Reading extraction against the framework

The principal contribution is a third fork.

The card currently offers two shapes of extraction and instructs the researcher to establish which he is looking at before hunting for a "just enough" equilibrium. Extraction as a **rate on a flow** needs the producer alive and tends to equilibrium. Extraction as a **seizure of a stock** needs the dispossessed gone and tends to elimination.

This case requires a third: **extraction against the future — the sale of a claim on a flow that does not yet exist.**

Its diagnostic properties are distinct from both and each is usable elsewhere. The present take is decoupled from the present spend, so the revolt threshold ceases to constrain the sum an order can deploy. The servicing levies must be permanent and therefore unobtrusive, so the technique selects for taxes collected invisibly at chokepoints and against taxes collected at doors. It converts a portion of the subject population from payers into holders, which is a settlement conducted in paper. And it requires a warrant the extractor does not himself supply, because a promise from a sovereign is a licence and only a promise lodged in an institution outside his control is a title.

That last property is the one to carry, because it inverts the usual direction of the framework's reasoning. **A state that wishes to borrow at scale must first make its own promises enforceable against itself, and it can only do that by routing them through a body it does not own — which means that the capacity to borrow is bought at the price of a permanent, structural check.** The Stuarts could not borrow because they could not be bound; the settlement of 1689 could borrow because it could be. That is not a moral about good government. It is an arithmetic about what a lender will pay for, and it explains why the fiscal-military states of the eighteenth century were the ones with representative institutions and not the ones with the largest armies.

Three findings compound.

A fiscal dependency binds where a constitutional guarantee does not. The Triennial Act of 1664 required parliaments every three years and was ignored for four. The Triennial Act of 1694 required them every three years and would have been equally ignorable. What actually brought the Commons to Westminster every winter for the next two centuries was that the customs expired, the land tax was annual, the Mutiny Act lapsed, the supply was appropriated and the war had to be paid for in the spring. Look at the revenue calendar before the constitution.

A term-limited grant is better security than a perpetual one. Musgrave's argument in the debates of 1690 is the technical insight underneath the constitutional one: a duty that must be renewed on a known date, by a body that must meet to renew it, is a more reliable fund to lend against than a duty granted for a life that may end at any moment. The under-funding of the crown was not only a precaution against a king; it was a precondition of the credit that made the king's wars possible. The Commons tightened the tap and thereby made the pipe worth lending against.

And the language of consent attaches to lenders while the language of duty attaches to payers, often in one sentence. The Bank's founding Act grants duties on shipping and on beer, ale and other liquors, in order to secure recompenses to such persons as shall voluntarily advance. Nobody drank voluntarily.

A closing note on method, because this case exposes a limitation in the collection's own instruments. The extraction module's standard apparatus — rates, tonnages, labour-days, the proportion of the harvest, the distance from subsistence — is built to measure what is taken from people now. It will report an order like this one as moderately extractive, because in any given year the visible take was moderate. It will entirely miss the largest transaction, which is a stream of future taxation pledged in advance to present lenders, falling on people who were not yet born and had no part in the pledging.

Where a state funds its debt, the extraction module must count the pledge as well as the take, and must ask the distributional question in the only form that reveals anything: not who paid this year, but who holds the paper and who will be paying the interest on it in fifty years. In this case the answer to the first is a few thousand subscribers in London and the answer to the second is everybody in England who drank beer, and their children, and their children's children.

A note on sources. Quoted exactly from public-domain primary texts: the long title of the Bank of England Act 1694, at "An Act for granting to theire Majesties severall Rates and Duties upon Tunnage of Shipps and Vessells and upon Beere Ale and other Liquors" through "towards the carrying on the Warr against France", and the

assignment provision permitting sums to be "assignable or transferrable assigned or transferred to such person or persons only as shall freely and voluntarily accepte of the same", from *Statutes of the Realm* as reproduced at legislation.gov.uk. The vote of £600,000 to the Dutch in August 1689 is recorded in the Commons' proceedings for the Convention's first session and is charged on the revenues by 1 Will. & Mar. Sess. 1 c. 28.

Paraphrased and credited to modern scholarship: the fiscal history of the period rests substantially on P. G. M. Dickson's account of the financial revolution and John Brewer's of the fiscal-military state, both used at second hand here; Clayton Roberts's analysis of the constitutional significance of the financial settlement of 1690, from which the structure of the grant and the substance of the Commons debates are taken, including the arguments from the need for frequent parliaments and Sir Christopher Musgrave's argument from the need to secure a fund of credit; and the standard accounts of the land tax, the excise establishment, the Commission of Public Accounts, the Civil List Act 1698, the Stop of the Exchequer of 1672, the Company of Scotland and the Darien venture.

Contested figures are given as ranges and several are weaker than this study would like. James II's revenue is given as under two millions on the basis of contemporary debating figures already flagged in the landscape. The average annual war expenditure of over £5.4 million against tax revenue of about £3.6 million, and the land tax's yield of about £1 million in its first year and its supply of roughly a third of war finance, follow the standard teaching figures and should be checked against Dickson and Brewer directly before compilation. The national debt at the peace is given as between £14.5 million and £16.7 million, both figures appearing in reputable sources for 1697 and 1698 respectively, and the interest burden as around a third of expenditure or thirty per cent of revenue depending on the measure; no single figure is asserted. Total war costs for 1688–1702 are quoted in one source at £72 million with about half debt-financed, and that figure has not been corroborated here and is not relied upon. The allocation of the 1690 settlement — £300,000 from the excise for life and about £600,000 from the customs for four years — is given as the standard account and its details differ between authorities; the Civil List figure of £700,000 from 1698 likewise. The Company of Scotland's subscription of about £400,000 and its representing a very large share of Scottish liquid capital is the conventional statement and the proportion is disputed among Scottish economic historians.

Two things that would embarrass the argument are flagged. First, this module treats the fiscal settlement as improvised rather than designed, which is the majority scholarly position but is contested by accounts that read more intention into the Convention's

financial decisions; the evidence of the 1690 debates supports deliberate under-funding of the crown but not a plan for a funded debt, which nobody in 1689 anticipated. Second, the argument that parliamentary warrant rather than improved honesty explains the credit revolution is a structural reading and is not the only one available; scholars who emphasise the growth of a secondary market in securities, or the role of Dutch and Huguenot capital and expertise, would locate the explanation differently, and those accounts are complementary rather than contradictory but have not been weighed here. Every load-bearing fact in this module is to be re-verified against a primary or standard source before it is built upon.

MODULE 7

Answerable for the One, Just as He Is for the Other

Information and suppression — a state that abandoned pre-publication censorship for reasons entirely commercial, and replaced it within a month with something cheaper; a student of twenty hanged in Edinburgh for what he said in a tavern; and an official inquiry that named a murder, punished nobody, and was reprinted eight years later to undeceive the public

The seam, and the two valves

Every complex society grows a position of trusted interpretation, because no one can check for himself more than a sliver of what he must believe, and somebody must therefore be believed about the rest. The position is structural. It cannot be created and it cannot be abolished; it can only be occupied, crowded by many competing hands, or captured by one. And whoever holds it works two valves: an **inflow** valve that feeds an authorised account through the institutions that form people, and an **outflow** valve that starves the rival account — by banning it, or, more cheaply, by simply never teaching it.

In England in 1688 the seam was held, and the apparatus is easy to enumerate because it was written down.

The **inflow** ran through the parish pulpit, the catechism, the Book of Homilies, the two universities — closed by law to anyone who would not conform — and the *London Gazette*, which was the government's own paper and had, in practice, a monopoly of printed news. On any given Sunday a larger number of English people heard the same words read from the same book than were reached by every other channel combined.

The **outflow** valve was the Licensing of the Press Act of 1662. It required that nothing be printed without a licence from the appropriate authority — the Secretaries of State for matters of state, the bishops for divinity, the Chief Justices for law. It limited the number of master printers, and confined printing to London, York and the two universities. It gave the Stationers' Company, whose commercial interest was identical with the arrangement, powers of search to hunt unlicensed presses and books. And it created the office of Surveyor of the Press, held for most of its life by Roger L'Estrange, who was as thorough a censor as England has had.

That statute was in force from 1662 to 1679, and again from 1685. It was renewed in 1693. And it is the single best instrument this study has for measuring what the Revolution settlement actually did about information, because its fate can be dated to the day.

Six years of operating the Stuart machine

The first thing to establish is that the settlement did not arrive with any commitment to a free press, and did not behave as though it had one.

Between 1689 and 1695 the government of William and Mary operated the licensing system it had inherited, unchanged, under the same statute, with a licenser in post. Parliament renewed the Act in 1693. The *Gazette* remained the official paper. And the new regime used the machinery, including against people arguing on its own side: in January 1693 the Commons ordered a pamphlet arguing that William and Mary held by conquest to be burnt by the common hangman, and in the same resolution moved the King to remove Edmund Bohun, the Licenser of the Press, from his employment — which he did, and Bohun was imprisoned.

So for six years the settlement of 1689 ran the censorship apparatus of Charles II and James II without alteration, and its most notable use of that apparatus was to destroy a book written in its own defence and dismiss the official who had passed it.

That is the baseline against which what happened next has to be read. Whatever the lapse of licensing was, it was not the fulfilment of a principle the settlement had arrived carrying.

1695, and the reasons that were given

The sequence is short and every step of it is dated.

On 30 November 1694 the Commons appointed a committee to inspect which laws were expired or expiring and fit to be revived and continued. On 9 January 1695 the committee reported, resolving to renew the Licensing Act among others. On 11 February 1695 the House rejected the renewal, without a division. When the Continuation Bill reached the Lords, they amended it to put the Licensing Act back in and returned it. The Commons appointed a committee to prepare reasons for disagreeing; Edward Clarke, member for Taunton, reported the objections and carried the message to the Lords asking for a conference. On 18 April 1695 the Lords gave way and let the bill pass without the clause. On 3 May 1695 the Act lapsed, and pre-publication censorship in England ended.

Now the reasons, because they are the finding.

The objections the Commons prepared concerned the restraint of trade the Act represented; the Stationers' Company's abuse of its position; and the monopoly the Company enjoyed over the works of classic authors, which kept prices high and quality low. Behind them stood a memorandum John Locke had written to Clarke, who was his friend and a member of his private political circle. Locke's objections were that the Stationers' monopoly made the progress of learning subject to licensers whose only concern was business; that the requirement not to contradict the laws or religion of the land was hopelessly vague; and that the Act allowed authorities to search all houses on the suspicion of having unlicensed books.

Not one of those reasons is about the liberty of the press. As the modern commentary on the episode puts it, it was the problems generated by the Company's control of the trade, rather than any abstract love of freedom, that persuaded the Commons to abandon the Act.

Locke himself had the argument, and had put it as well as anyone ever has:

> *I know not why a man should not have liberty to print whatever he would speak; and to be answerable for the one, just as he is for the other, if he transgresses the law in either. But gagging a man, for fear he should talk heresy or sedition, has no other ground than such as will make chains necessary, for fear a man should use violence if his hands were free, and must at last end in the imprisonment of all who you will suspect may be guilty of treason or misdemeanor.*

But that is not what the Commons said to the Lords. What the Commons said to the Lords was about the price of classical texts and the search of tradesmen's houses.

And that discrepancy is the module's first and most useful finding, because it is a diagnostic rather than an irony.

A monopoly that is released for commercial reasons was not being defended as load-bearing. Men who believed that pre-publication control of print was holding their order up would not have let it go over the Stationers' pricing of Cicero. The reasons a body gives for abandoning an instrument of power are the best available evidence of what it thought that instrument was for — and in April 1695 the House of Commons of England thought the licensing of the press was, essentially, a trade regulation that had become a nuisance.

They were right, and the reason they were right runs back through the whole of this study. This settlement did not require the belief of the people it governed. Its revenue was taken at the brewery, its obedience was collected by neighbours, its formation apparatus was the Restoration's and had not been touched, and its actual constituency was several thousand men whose titles and whose government stock made their interest

plain without anybody having to persuade them of anything. An order in that condition has no use for an interpretive monopoly. **The interpretive monopoly is expensive, and it is only worth its cost where the order's cheapness depends on belief.**

What replaced it, within a month

The seam was not thereby emptied, and it is important to be exact about what did and did not happen, because the familiar account of 1695 as the birth of press freedom obscures the structure.

In May 1695, barely a month after the Act lapsed, the Lord Justices declared that the offences of criminal and seditious libel were, when detected, still punishable at common law. Locke had predicted this: he had argued that renewal was unnecessary precisely because the common law already contained sufficient authority to deal with seditious publication.

So the state did not give up control of print. It changed technology. **Prior restraint was replaced by subsequent liability** — and Locke's own formula describes exactly what was adopted, though not at all in the spirit in which he offered it. A man might print whatever he would speak, and be answerable for the one just as he was for the other.

Those two technologies are not points on a spectrum from more control to less. They are different instruments with different economics and different failure modes, and setting them side by side is the most useful thing this module can do for the framework.

Prior restraint requires a censor with a doctrine, in advance, applied to everything. Someone must read every manuscript and decide. That means the state must have a settled position on every question a book might raise, must staff an office to apply it, and must physically prevent the existence of the objectionable object. It is comprehensive, expensive, and brittle: it fails visibly, because the failure takes the form of an unlicensed book in circulation, and every such book is a demonstration that the system does not work. It also makes the state, in effect, the author of everything published, which is a liability as well as a power — a licensed book carries the government's imprimatur, which is why Bohun's licensing of a pamphlet the Commons detested cost him his office.

Subsequent liability requires no doctrine and no advance decision. It requires only a prosecutor with a grievance, a court, and a jury, applied after the fact and only to the few publications that actually matter. It is selective, cheap, and durable: it fails invisibly, because a prosecution lost is one case rather than a breach in a wall, and the system

survives any number of them. It does not prevent publication; it makes publication expensive for the publisher and leaves the government as plaintiff rather than as author.

Stated for the card: **an order does not need to hold the interpreter's chair if it holds the courts.** Where a study finds a state abandoning pre-publication censorship, it should not record a transfer of the seam to other hands until it has checked what the law of libel, sedition, blasphemy and treason is doing in the same decade. The visible instrument may have been given up precisely because the invisible one was cheaper.

The vacancy refilled, and it refilled crowded

The framework holds that a seam vacated does not stay vacant: the position is structural, the vacancy refills, and a suppression that destroys one occupant frequently produces a more captured seam than the one it destroyed, because razing the old occupant tends to raze the rival channels that used to crowd and check it.

Here the vacancy refilled, and it refilled the other way.

What poured into the space after May 1695 was the party press. Newspapers multiplied — the *Post Boy*, the *Post Man*, the *Flying Post*, and within seven years the first English daily. Pamphlet warfare between Whig and Tory became continuous and professional. Printing spread beyond the licensed towns. The government's paper lost its monopoly of news and became one paper among many, and by the end of the reign English political argument was being conducted, permanently and in public, in print.

That is the framework's *crowded* condition — many competing hands that check one another — which the collection has identified as the whole of the available liberty. And the question worth asking is why this vacancy refilled crowded when the Interregnum's refilled otherwise.

The answer is not intention. Nobody in 1695 intended a free press; the reasons given were about the Stationers' Company. The answer is the **cost of entry**. A printing press was a modest capital item; London was a large market with money in it; literacy was widespread enough to sustain a trade; and the law of copyright had lapsed along with the licensing, so anybody could print anything by anybody. Under those conditions a vacated seam refills with many hands automatically, because many hands can afford to reach it.

Where entry is expensive or controlled — one church, one university, one licensed press, one manuscript tradition — the same vacancy refills with one hand, and the framework's warning applies in full.

The refinement: whether a vacated seam refills crowded or captured is decided by the cost of entry, not by the intention of the party who vacated it. That is a variable a study can measure — the price of a press, the size of the reading market, the

number of towns permitted to print — and it predicts the outcome better than any account of motives. It also explains why the collection's earlier finding holds where it holds: a state that destroys an interpreter class in a society where interpretation is expensive has cleared the ground for a monopolist, whereas a state that stops licensing in a society where interpretation is cheap has created a market.

Where the line actually ran

Politics opened. Religion did not, and the boundary is exact and it is bloody.

In England the settlement drew the line in 1698 with an Act against blasphemy, aimed principally at denials of the Trinity, which imposed disabilities — loss of office, loss of capacity to sue or inherit, imprisonment on a second conviction — rather than death. Five years earlier, in December 1693, the Commons had ordered a pamphlet confuting the doctrine of the Trinity to be burnt by the hangman the following day.

In Scotland the line was drawn with a rope.

The Scottish parliament of 1695 — the same parliament that would within a year order a school in every parish — passed an Act against blasphemy among a group of statutes on profaneness, markets on Saturdays and Mondays, and irregular baptisms. It sat alongside an existing Act of 1661 which ordained death for anyone not distracted in his wits who should rail upon or curse or deny God and obstinately continue therein. The new Act graduated the penalties: imprisonment and sackcloth for a first offence, imprisonment, sackcloth and a fine for a second, death for a third.

In the autumn of 1696 Thomas Aikenhead, a student at Edinburgh aged twenty, was arrested on the information of fellow students. He had read Hobbes and Spinoza in the university library — the Privy Council had ordered such books removed from the library and the shops — and had talked in company. The charges were that he had called theology a rhapsody of ill-invented nonsense, that he had called the Old Testament Ezra's fables and the New Testament the history of the impostor Christ, and that he had scoffed at the Trinity. Five fellow students testified against him. He could not afford counsel and defended himself. The Lord Advocate demanded death under the Act of 1661 rather than the graduated penalties of 1695, and got it.

On 8 January 1697, guarded by two lines of fusiliers, he was marched from Edinburgh toward Leith and hanged. He left a paper which said that it is a principle innate and co-natural to every man to have an insatiable inclination to the truth, and to seek for it as for hid treasure. He was the last person executed for blasphemy in Britain. Afterwards the clergy increased their surveillance of the university and instituted a register of students with a view to their piety.

Set the two kingdoms side by side in the same eighteen months. In April 1695 the English Commons let pre-publication censorship expire over a dispute about the Stationers' Company. In January 1697 a Scottish court hanged a boy of twenty for what he had said in a tavern.

The explanation is the one this study has now reached from three directions. **An order that needs the conviction of its population must police the seam; an order that needs only compliance need not.** The Scottish settlement rested on a Convention's declaration that the crown had been forfeited, was building schools in every parish at the landowners' compulsory expense, and had restored a Kirk whose authority ran through the belief of the people. It could not tolerate a public denial of the doctrine that held it together. The English settlement rested on titles, stock, and the excise, and could afford to let anybody print anything, because nothing anybody printed threatened any of the three.

The framework's own rule that surveillance is the tell of a belief that never took needs, on this evidence, a companion. **Suppression is the tell of a belief the order actually needs.** Where a state kills over a proposition, it has told you which proposition is load-bearing for it — and the English state in this decade killed over almost nothing at all, which is the measure of how little it required.

The seam that could not be closed: an inquiry that punished nobody

One episode in this decade shows the outflow valve failing, and it fails in a way the framework does not currently have a name for.

On 13 February 1692, soldiers of the Earl of Argyll's regiment, who had been quartered on the MacDonalds of Glencoe for a fortnight and eaten their food, turned on their hosts. About thirty people were killed and others died of exposure in the mountains; the houses were burnt and the cattle driven off. The order that has come down to us is unambiguous in its intention, though it survives in reproduction rather than in an original this study has inspected: to fall upon the rebels the MacDonalds of Glencoe and put all to the sword under seventy, at five of the clock precisely, by the King's special command, that these miscreants be cut off root and branch.

The accounting of that belongs to a later module. What belongs here is what was then done about it.

For three years, nothing. The officers had made the King's instructions public for their own exoneration. Then, in 1695, the Scottish parliament pressed for an inquiry with such unanimity that, in the words of a memorial in the King's own papers, it was

plain that without it business would stop or the parliament would order an enquiry itself — and the King's Commissioner, who had shunned the matter for ten days while waiting to hear from Flanders, gave way.

A commission under the Great Seal of Scotland enquired. Its report vindicated the King's instructions, and loaded the letters of the Master of Stair as having exceeded those instructions and as proceeding from pique and animosity. The officers pleaded that they had executed the instructions in the sense the letters gave them, which, the memorial observes drily, could hardly be extended to the manner of the execution. On 10 July 1695 the Parliament of Scotland addressed the King touching the murder of the Glencoe men, asking for justice upon the murderers.

Nobody was prosecuted. Nobody was punished. Stair resigned his secretaryship and was afterwards created an earl.

This is not suppression in the ordinary sense and it should not be filed as such. The account was not starved: it was investigated by the state's own commission, reported to the state's own parliament, and named as murder in an address to the King. What the state withheld was not the information but the consequence.

The framework reads dissent as answered in one of four ways — appropriation, concession, force, or terror — and reads the outflow valve as starving a rival reading. Glencoe requires a fifth answer, and it is a common one that the corpus has not yet named:

Absorption. Hold the inquiry. Publish the finding. Concede the fact in full, in official language, at official length. Punish nobody. And let the fact become old.

Absorption is cheaper than suppression, because it costs nothing to admit something, and it is more durable than denial, because a denial can be refuted and an admission cannot. It converts a live accusation into a settled historical matter within one news cycle, and it leaves the accusers with nothing further to demand, because the thing they demanded — an inquiry — has been given them. Its price is a permanent documentary record of the crime, held in the state's own archive, in the state's own words.

And that price is only a price if somebody can print it.

In 1703 the whole file — the commission under the Great Seal, the proceedings of the Parliament of Scotland, the report of the commissioners as laid before King and Parliament, and the Address of the Parliament to King William for justice upon the murderers — was published in London by George Ridpath and Charles Leslie, faithfully extracted from the records of parliament, and, in the words of its own title page, *publish'd for undeceiving those who have been impos'd upon by false Accounts.*

Ridpath was a Whig journalist and Leslie a nonjuror; they agreed about almost nothing. They collaborated to put the government's own inquiry into a bookshop.

Which is the closing structural point of this module and the answer to the seed's question about whether a state that has abandoned the interpretive monopoly can nonetheless be stable. It can. But it has lost one specific capacity, and the capacity is this: **a state that has given up prior restraint cannot let a fact become old, because anybody can make it new again.** Absorption works only where the record can be left to gather dust. Where the press is crowded, the record is a permanently loaded weapon lying in an archive, and it will be picked up by whoever finds it useful, in whatever combination, at whatever distance in time.

Eight years, in this case. It has been picked up rather more often since.

Reading information and suppression against the framework

The principal contribution is that state control of information has two technologies, and they are instruments rather than degrees.

Prior restraint — licensing, the censor, the imprimatur — requires a settled doctrine applied in advance to everything, is comprehensive and expensive, fails visibly, and makes the state the author of what it permits.

Subsequent liability — seditious libel, blasphemy, treason, prosecuted after publication — requires no doctrine and no advance decision, is selective and cheap, fails invisibly, and leaves the state as plaintiff.

England exchanged the first for the second in the space of one month in the spring of 1695, and the exchange is usually recorded as the birth of a free press. It was that, in its consequences. It was not that in its intention, and the framework's discipline is to read the instrument rather than the consequence: **an order does not need to hold the interpreter's chair if it holds the courts**, and a study that records the end of licensing as the end of control has stopped measuring one clause too early.

Four findings compound.

A monopoly released for commercial reasons was not being defended as load-bearing. The reasons a body gives for abandoning an instrument are the best evidence of what it thought the instrument was for. The Commons of 1695 gave reasons about the price of classical texts and the searching of tradesmen's premises. They were not defending a wall; they were repealing a nuisance — because their settlement did not run on the belief of the people who read books.

Whether a vacated seam refills crowded or captured is decided by the cost of entry. The collection already holds that the interpreter's seat cannot be emptied and that the vacancy refills, often more captured than before. This case supplies the variable

that decides which. Cheap presses, a large reading market and no licensed monopoly produce many competing hands; expensive or licensed interpretation produces one. The relinquisher's intentions are irrelevant to the outcome; the price of a press is not.

Suppression is the tell of a belief the order needs. The framework reads surveillance as the tell of a belief that never took. Its companion is this: where a state kills over a proposition, it has identified the proposition its own arrangement cannot survive being denied. In this decade the English state killed over nothing printed, and the Scottish state hanged a boy of twenty for denying the Trinity — and the difference is the difference between a settlement resting on deeds and stock and one resting on a Kirk.

And absorption is a fifth answer to dissent, alongside appropriation, concession, force and terror. Hold the inquiry, publish the finding, concede the fact in official language, punish nobody, and let it become old. It is cheaper than denial and more durable, and its only cost is a permanent record in the state's own archive — a cost which is nil where nothing can be printed and unbounded where anything can. **Expect absorption to be the preferred technique of an order that has lost prior restraint but retains the courts, and expect it to fail on a long enough timescale, because the record it creates outlives the silence it purchases.**

A note on sources. Quoted exactly from public-domain primary texts: John Locke, on the licensing of the press, at "I know not why a man should not have liberty to print whatever he would speak; and to be answerable for the one, just as he is for the other" through "the imprisonment of all who you will suspect may be guilty of treason or misdemeanor"; the title page of *The Massacre of Glenco* (London, 1703), at "Faithfully extracted from the Records of Parliament. And publish'd for undeceiving those who have been impos'd upon by false Accounts", together with its description of its contents as the commission under the Great Seal, the proceedings of the Parliament of Scotland, the report of the commissioners, and the Address of the Parliament to King William for justice upon the murderers; the Scottish Blasphemy Act of 1661 at "not being distracted in his wits" and "rail upon or curse or deny God, and obstinately continue therein"; Thomas Aikenhead's paper at "It is a principle innate and co-natural to every man to have an insatiable inclination to the truth, and to seek for it as for hid treasure"; and the Commons' resolution of 21 January 1693 ordering *King William and Queen Mary Conquerors* burnt and moving the removal of Edmund Bohun, from the *Journal of the House of Commons*, volume 10, as sourced in an earlier module.

Paraphrased and credited to modern scholarship or drawn from the standard reference literature: the provisions and operation of the Licensing of the Press Act 1662, including the restriction of printing to London, York and the universities, the

Stationers' search powers and the office of Surveyor of the Press; the dated sequence of the Act's lapse between November 1694 and 3 May 1695, the committee's reasons as reported by Edward Clarke, and Locke's memorandum to Clarke — this account follows the commentary and documents assembled by the Primary Sources on Copyright project and the scholarship it cites, in particular Astbury on the renewal of 1693 and the lapse of 1695, and Kenyon's judgment that it was the problems generated by the Stationers' control of the trade rather than any abstract love of freedom that persuaded the Commons; the declaration by the Lord Justices in May 1695 that criminal and seditious libel remained punishable at common law, as reported by Hanson and cited in the same commentary; the expansion of the newspaper and pamphlet press after 1695; the English Blasphemy Act of 1698; the Scottish Blasphemy Act of 1695 and the trial and execution of Thomas Aikenhead; and the Glencoe inquiry of 1695, its report, and the Address of the Scottish Parliament of 10 July 1695, as calendared in the State Papers.

Contested and uncertain points are flagged. The order to Campbell of Glenlyon, quoted here at "put all to the sword under seventy", "at five of the clock precisely" and "cut off root and branch", is very widely reproduced but is given here from a modern reproduction rather than from an original inspected for this study, and the wording should be checked before compilation. The account of the Glencoe commission's findings — that it vindicated the King's instructions and loaded Stair's letters as exceeding them and proceeding from pique and animosity — is taken from a contemporary memorial calendared among King William's papers and is therefore a report of the report; the commission's own text has not been read here. The characterisation of the *London Gazette* as holding a monopoly of printed news is a standard shorthand for a practical rather than absolute position. The number of master printers permitted under the 1662 Act is not asserted here because the figure varies between accounts. Aikenhead's age is given as twenty; his baptismal year is given as 1676 in most sources and 1678 in at least one, and the discrepancy is unresolved. Finally, this module asserts that the settlement's abandonment of licensing followed from its not needing popular belief; that is an inference from the pattern established across this study rather than a claim any contemporary made, and it should be weighed as such. Every load-bearing fact in this module is to be re-verified against a primary or standard source before it is built upon.

MODULE 8

A Sponge in His Left Hand

Elite coordination and the default — a settlement that handed out no land at all in the kingdom that mattered, and manufactured its defenders out of paper instead; why the strongest binding in the three kingdoms was created by the losing side; and the one variable that inverts what this collection thought it knew about creditors

What this module is asking

Not why the ploughman obeyed. That was priced elsewhere, and the answer was that he was obeying his neighbours and had barely noticed the government.

This module is about the hierarchy, and about the observation that stable long-lived orders have in common: they are arranged so that everybody inside the arrangement defends the arrangement out of nothing more elevated than self-interest. Each man, defending his own position, defends the whole structure without being asked, without coordinating, and without needing to approve of anybody else in it. That is what makes an order cheap and what makes it durable, and it is why men who dislike each other intensely — Whig and Tory, bishop and dissenter, Dutch courtier and English squire — will nonetheless act together to keep a thing running that serves them all.

The test is a single question asked of every rank in turn: *if this arrangement were reversed tomorrow, would this man be better or worse off, and could he name the loss?* Where the answer is "worse, and he could name it in one sentence," you have a defender who requires no instruction. Where the answer is "he isn't sure," you have a spectator. And where a group with standing and means finds that the answer has become "better" — that it is no longer benefiting from an arrangement it has the capacity to challenge — you have located the fracture, and the fracture is where change comes from.

Run that question down the English hierarchy of 1689 and the first result is alarming.

The problem: a settlement that distributed nothing

Every other settlement in this sequence of studies manufactured its defenders by handing out land.

In 1066 an entire landholding class was replaced man by man, each Norman seated in the exact legal position of a named dead Englishman, so that every one of them held an estate whose validity depended on the conqueror's title being good. Between 1536

and 1540 something approaching a quarter of England passed through the crown's hands into those of several thousand families in every county, on deeds that a restored abbot would have had to reopen — which is why the dissolution was never reversed, not even by a Catholic queen who wanted to reverse it. Even the Protectorate distributed: crown lands, bishops' lands, deans' and chapters' lands, royalist estates, and the greater part of the land of Ireland.

In England between 1688 and 1701, nothing whatever was distributed. No confiscations, no attainders of estates, no court of claims, no commission for sales. The Catholic gentry of England kept their land. James's ministers went home to their own houses. The men who signed the invitation, rode to Exeter, sat in the Convention and voted the crown to William and Mary ended the business owning exactly what they had owned when it started, plus some offices and some peerages.

So this settlement began with the strongest binding the collection knows — the deed, sourced in the new order's own instrument — entirely absent in the kingdom that mattered most. Everything else in this module is the search for what filled that gap, and the answer, when it comes, is a new entry on the card.

Running the hierarchy: the weak bindings

The landed gentry and peerage. Ask the question and the answer is uncomfortable. If the Stuarts came back, what would a Northamptonshire squire lose? Not his land, which the Revolution had not given him and a restoration could not take. Not his local standing, which rested on the same acres and the same neighbours.

What he would lose is his neck, in theory. Sir Robert Howard had said it to the House of Lords in February 1689: everyone who had acted was guilty of high treason unless the throne had been vacant when they acted. That is a real exposure and it explains a great deal about the drafting of the settlement.

But it is a soft binding, and every man in England knew exactly how soft, because the demonstration was thirty years old and most of their fathers had lived through it. A restoration's first act is a general pardon. In 1660 the Act of Indemnity and Oblivion pardoned almost everybody who had fought against the crown for eighteen years, with a short list of exceptions. The precedent was in every gentleman's memory: a returning king needs the country more than he needs revenge, and the men who most need pardoning are the men whose acquiescence he must have.

Stated for the card: a binding that a restoration can dissolve with a proclamation is not a binding. Exposure to treason charges looks formidable on paper and prices at almost nothing in a market where general pardons are the standard

opening move of every restored regime. It will hold a few men who are certain to be on the exception list and it will hold nobody else.

The office-holders. The collection's ranking places office third of four, and the reason is precisely visible here: an office is revocable by whoever holds the apex, which means the office-holder's interest attaches not to *this* apex but to *whoever will confirm him*. A placeman under William is a placeman under James, provided he changes sides early enough and visibly enough.

That is not a hypothetical. Through the 1690s a number of the settlement's most prominent men kept correspondence open with the exiled court at Saint-Germain — insurance, in the ordinary way of courtiers who had seen four changes of regime in forty years and expected to see more. The letters have been argued over ever since as to their sincerity, and sincerity is beside the point. What matters structurally is that men in the highest offices of the new order thought it prudent to hold an option on the old one. Office does not bind. It merely pays.

The Anglican clergy who swore. Here there is a real binding, and it is a by-product gain rather than a grant: the establishment of the Church of England survives only while the Protestant settlement survives, because the alternative claimant was a Catholic raising a Catholic son. A clergyman defending his own establishment defends the settlement without being asked, and does not have to like William to do it.

But it was contingent in two ways. It depended on the Pretender remaining Catholic, which was a bet rather than a certainty. And it was weakened by the memory that James had not courted the Church at all — he had courted the dissenters, over the Church's head. Four hundred clergy found the binding insufficient and gave up their livings.

The dissenters. And here is the module's most awkward negative, which the familiar account of the Revolution passes over.

The Toleration Act gave Protestant dissenters exemption from penalties for worship, and left them excluded from office, from the corporations and from the universities. James II's Declarations of Indulgence had offered them considerably more: suspension of the penal laws *and* of the Test Acts, which would have opened office to them. The offer had been refused in 1688 by most dissenting leaders, who correctly judged that a liberty granted by prerogative could be withdrawn by prerogative and that they were being used to open a door for Catholics.

But the arithmetic remains what it is. The group the Revolution is conventionally said to have rescued was offered a better deal by the man it removed, and turned it down for reasons of prudence rather than gratitude. Their attachment was to a Protestant succession, not to the terms of the settlement — which is a different and

weaker thing, and it means that a Protestant Stuart, had one existed, would have found them entirely available.

Sum the English column: no deed, revocable office, a contingent by-product gain in one profession, and a beneficiary class with a plausible better offer from the other side. That is a thin default, and it is why the 1690s were a decade of plots, insurance letters and assassination attempts rather than a decade of settled loyalty.

The strong bindings, and where they actually were

Ireland. Here the default was total, and the fact worth stopping on is *who manufactured it*.

The Williamite grantees held forfeited land under statute, and they would obviously lose it if the statute were reopened. That is the ordinary deed-binding and it accounts for a few thousand men.

But the binding ran far wider than the new grantees, and it did so because of a document the Jacobites themselves produced. James's parliament at Dublin in the summer of 1689 repealed the Restoration land settlement and passed an Act of Attainder condemning some two thousand four hundred and forty-one named persons for high treason. It never took effect. It was printed.

Consider what that did. Before 1689, an Irish Protestant landholder under the Restoration settlement could tell himself that a Catholic king was survivable — his grandfather's title was thirty years old, confirmed by two Acts, and no king had proposed to disturb it. After 1689 he had a printed statute with his own name in it. The question "would I be worse off if this were reversed?" had been answered for him, in writing, by the other side, at length, with a list.

Stated for the card: the strongest binding in a settlement is sometimes manufactured by the party that lost it. A defeated claimant who publishes what he intends to do on his return converts every potential neutral into a defender, and does so more effectively than the winning side could, because the winners' warnings are propaganda and the losers' statute is evidence. Where a study finds an unusually solid default among a group that received nothing, it should look for a document produced by the losing side.

Scotland. The Presbyterian settlement of 1690 was the Kirk's whole world, and it dies with a Stuart restoration: episcopacy returns, and the ministers who took the parishes in 1690 lose them to the men they displaced. That is a deed-binding in benefices rather than acres, and it made the Kirk the most reliable institutional defender of the settlement anywhere in the three kingdoms. Add the Scottish forfeitures after the rising of 1689 and a lay interest sits behind it.

And then the creditors, who are the reason this module was written.

Testing the creditor finding

The previous study in this sequence produced a hard result and stated it flatly: **a creditor is not a defender.**

The reasoning was that a claim on the state can be discharged by anybody solvent, and the identity of the payer is a matter of indifference to the man holding the claim. The New Model Army was owed years of arrears; the arrears were what the army had instead of a settlement; and in 1660 a parliament voted the money, paid it, and the most formidable army in Europe went home and became innkeepers and weavers. Being owed by an order is not the same as holding under it, and the difference was worth a regime.

Does the funded debt invert that? The seed of this study guessed that it does. Testing the guess properly requires rejecting the obvious version of the argument first, because the obvious version does not work.

The obvious version, and why it is insufficient. It runs: a restored Stuart would repudiate debts contracted by a usurper to fund a war against his own restoration; therefore the holder's asset dies with the regime; therefore he is bound. Contemporaries certainly believed something like it. Addison, writing in the *Spectator* in March 1711, put it in an allegory that became the standard image of the whole question. A dreamer sees Public Credit enthroned in a great hall; the doors fly open and six phantoms enter to dance —

> *the first couple were Tyranny and Anarchy; the second were Bigotry and Atheism; the third, the Genius of a commonwealth and a young man of about twenty-two years of age, whose name I could not learn. He had a sword in his right hand, which in the dance he often brandished at the Act of Settlement; and a citizen, who stood by me, whispered in my ear, that he saw a sponge in his left hand.*

The young man of about twenty-two is the Pretender. The sword is for the Act of Settlement. The sponge is for the debt — the thing that wipes a slate. Public Credit faints, and the money in the hall turns to air and heaps of worthless paper.

Note who identifies the sponge. Not the dreamer: *a citizen who stood by me* — a City man, a holder. The creditor sees the sponge before anybody else in the room does.

But as an argument the sponge is not enough, and every stockholder knew it. A restored regime that repudiated its predecessor's debts would be unable to borrow a shilling itself, in the middle of a European war it would immediately have to fight. The rational move for a returning Stuart was to honour the debt and to say so loudly in

advance. Reason from what a restored government would actually *do*, and the answer is indeterminate, and an indeterminate answer binds nobody.

The version the evidence supports. It does not matter what a restored Stuart would do. It matters what the *price* does on the day the news arrives.

And that is a different question with a determinate answer. On the day a Jacobite army lands, the price of Bank stock falls — not because holders have concluded that the Pretender will repudiate, but because nobody knows, and uncertainty alone destroys a price. The holder does not get to wait for the outcome. He takes his loss the moment the news reaches the Exchange, and he takes it whether the Pretender turns out to be a repudiator or a model debtor.

That is the difference from arrears, and it is a difference in the *instrument*, not in the sentiment of the men holding it.

A soldier's arrears are a personal, unmarketable claim. There is no price for them; there is only payment or non-payment. Until somebody settles, the holder loses nothing by waiting, and waiting is exactly what makes him available to whoever offers to pay. He can afford to be indifferent to who wins, because his claim is unaffected by the interval.

Now read what the state issued instead. The Land Tax Act of 1692 provides that all orders for repayment shall be registered in course according to the date of the tally, without preference; that the moneys shall satisfy them in the same order; and that those moneys shall not be "divertible to any other use intent or purpose whatsoever". And it names the holders: the person, "native or foreigner", his "Executors Administrators & Assignes".

Every word of that is doing structural work. *Registered in course* creates a queue that can be verified, which makes the claim valuable and therefore saleable. *Assigns* makes it transferable. *Executors and administrators* makes it heritable. *Native or foreigner* invites Dutch and Huguenot capital by name and promises it equal standing. And *not divertible to any other use intent or purpose whatsoever* is an anti-exception clause of exactly the kind this study first met in the Restoration oaths — the drafters closing every door in advance, which tells you how recently and how vividly they remembered the Stop of the Exchequer.

What those clauses create is not a debt. It is a **security**: transferable, heritable, standing in a verifiable queue, and therefore priced — daily, publicly, collectively, on an exchange.

So the finding inverts, and the variable that inverts it is marketability.

Two mechanisms, and the second is the stronger.

First, the holder is exposed to sentiment rather than to outcome. He loses on the day of the news, not on the day of the decision, which removes the option of waiting that made the soldier of 1660 available to anybody with cash.

Second — and this is the mechanism that actually kills the old finding — a market cannot be bought off. The Cromwell result depended on a successor being able to discharge the claim: parliament in 1660 paid the arrears, soldier by soldier, and the binding dissolved. Nobody can do that to a market. A restored regime cannot approach forty thousand stockholders one at a time and settle with each, because their asset is not forty thousand separate claims but one collectively priced instrument. It can only restore confidence or fail to, and confidence is not divisible, cannot be negotiated in parts, and cannot be delivered by a promise from a government that has not yet demonstrated it can tax.

Stated for the card, as a design instruction rather than an observation: **to convert creditors into defenders, make the debt tradable.** A personal claim leaves its holder free to wait and available to be bought out. A marketable claim charged on the order's own revenues destroys its holder's option to wait and removes the successor's cheapest move. The English state did this between 1692 and 1697 and there is no evidence in the record that anybody intended this consequence; they were trying to raise money on better terms, and the political effect was a by-product of the financial technique.

That requires a revision to the ranking of bindings, which now reads:

Deed — a title in a thing, sourced in the order's own instrument. **Marketable claim charged on the order's own revenues** — transferable, heritable, priced daily and collectively. **By-product gain** — a benefit that flows from the arrangement without a grant. **Office** — revocable, and attaching to whoever holds the apex. **Personal debt** — a claim discharged by any solvent successor.

And the entry in second place has a property that no other entry on the list possesses, which is the largest single thing this module has to report.

A settlement in land can only distribute the land there is. Every previous settlement in this collection had to take from somebody in order to give to somebody: the Norman settlement dispossessed the English thegnage, the Henrician settlement dissolved the monasteries, the Cromwellian settlement confiscated Ireland. The supply of defenders was capped by the supply of confiscatable property, and the manufacture of each defender required the manufacture of an enemy.

A settlement in funded debt has no such cap. The state can issue as much stock as it can service, and each new subscriber becomes a defender without anybody being dispossessed of anything they could name. The people who pay — the drinkers of beer, the buyers of salt — do not experience the transfer as a taking, because the duty is

collected at the brewery and there is no farm, no title deed, no name on a list. **This is a settlement instrument that manufactures defenders without manufacturing enemies**, and it is the answer to the problem this module opened with: how a settlement that distributed no land in England nonetheless built a durable default.

It is also the reason the English state could afford to distribute no land. It did not need to.

The Association, and what a list is for

The elite coordination half of this module has a near-perfect demonstration, and it happened in February 1696.

A plot to assassinate the King on his way back from hunting at Turnham Green was discovered. Within days an Association was drawn up, on the model of the Elizabethan Bond of Association of 1584: its subscribers acknowledged William as **rightful and lawful King**, pledged to defend him, and bound themselves to revenge his death. It was signed by the Commons, circulated across the country, subscribed far more widely than anyone had planned, and shortly given the force of law, with Crown officers required by statute to subscribe.

The framework's ordinary reading is that this was a loyalty test, and it was. But its function was more specific and more interesting.

An elite's coordination problem is almost never a lack of shared interests. It is that nobody knows who else will move. Each man's willingness to act depends on his estimate of how many others will act, and since nobody can see anybody else's estimate, a group with overwhelming common interest can sit paralysed while a determined minority runs the country. That is the mechanism the previous study identified in the collapse of 1659–60 and the mechanism that dissolved James's army at Salisbury: the defections did not subtract manpower, they destroyed every colonel's confidence in his neighbour.

An Association solves that problem without changing anybody's interests at all. It makes positions **common knowledge**. Once a man has put his name to a paper acknowledging William as rightful and lawful King, he cannot subsequently claim he was neutral, and — much more importantly — every other subscriber can see that he cannot. The list does not create the coalition. It publishes it.

And it does something else, which is why it took a failed assassination to make it possible. It made refusal legible. Those who would not sign were, from that day, a visible and enumerable group.

The same year gave the other half of the demonstration. Sir John Fenwick, taken as a Jacobite conspirator, could not be convicted under the Treason Trials Act which

parliament had passed only months earlier and which required two witnesses to the same overt act — one of the two had been got out of the country. Parliament proceeded by bill of attainder instead, and he was executed in January 1697.

A coalition that has just given defendants in treason cases the protection of counsel and a two-witness rule, and then attaints a man by statute when the rule proves inconvenient, has shown you what it will do under pressure. The default, when it is real, does not stop at the forms.

Where the fracture was

Now the other half of the question: which group with standing and means had stopped benefiting?

The landed interest, and the grievance was arithmetically exact rather than merely resentful.

Land paid four shillings in the pound, year after year, assessed on the annual value of estates. Meanwhile the excise and the customs serviced a permanent debt whose holders drew eight per cent, tax-free, on paper that could be sold at will. The contemporary vocabulary named the division precisely — the **landed interest** against the **moneyed interest** — and it described a real transfer, not a prejudice: a class whose wealth was immovable and visible was being assessed to pay a return to a class whose wealth was liquid, assignable, and largely in London.

The attempted remedy is the most revealing episode of the decade. Between 1694 and 1696 a series of projectors — Briscoe, Chamberlen, Barbon, Asgill — put forward land banks, institutions that would issue credit against landed security rather than against coin, and thereby give the landed interest its own engine. The National Land Bank of 1696 was authorised by statute. It failed to raise its subscription.

The landed interest of England tried to build its own bank and could not find the money. That is the fracture failing to become an alternative, and it is as clean a demonstration of where power had moved as this study contains. A group with enormous standing, an articulate grievance, a legislative majority available to it, and a plausible institutional design, could not assemble the capital — because the capital was in the hands of the people it was complaining about.

A caution is owed here. Modern scholarship has argued that the Whig-and-moneyed against Tory-and-landed mapping onto the bank projects is too neat, and that what the projectors themselves argued about was technical: the safety of the proposed fund and the ability to restrain credit. That correction is accepted; the political alignment was looser than the slogans suggest. What is not disputed is the outcome.

Scotland supplies the second fracture and the largest. The Company of Scotland raised something like four hundred thousand pounds — a very large share of the kingdom's liquid capital — for the settlement at Darien, and lost substantially all of it by 1700, in a venture that English commercial and diplomatic pressure had helped to strand. Here is a ruling class with standing and means that had unambiguously stopped benefiting from a shared crown, and had the institutional capacity to say so through its own parliament. What followed within a decade was not a rising but a renegotiation, and the renegotiation was the Union.

Ireland supplies the third, and it ran inside the winning coalition. William granted large blocks of Irish forfeited land to favourites; the English Commons, taxed at four shillings in the pound and short of money for the war, refused to watch it. A commission reported in 1699, and the Resumption Act of 1700 revoked almost all of the grants and vested the estates in trustees for sale. It is worth recording that the only forced restitution in the whole settlement was extracted not from a defeated enemy but from the monarch, by his own parliament, against his open resistance.

The repair that came from outside

The default was fraying at the end of the 1690s. The war ended in 1697, the army was cut, the land tax was resented, the Irish grants had produced a constitutional quarrel, and the Whig Junto fell.

What repaired it was not domestic.

In September 1701 James II died at Saint-Germain, and Louis XIV recognised his son as King of England, Scotland and Ireland. The Act of Settlement had already passed in June; the recognition converted a domestic party question about the succession into a question of whether the King of France would name England's monarch. An oath of abjuration followed. The political nation closed.

That is worth stating as a general observation, because it recurs. **A default that is fraying internally can be repaired from outside, and the cheapest repair available is an insult from a foreign power.** The mechanism is the same one the Association exploited: an elite's problem is common knowledge, not interest, and a foreign challenge supplies common knowledge instantly and for free. It tells every member of the coalition, simultaneously and without any of them having to move first, that the others are about to move.

Reading the default against the framework

The principal contribution is that marketability inverts the creditor finding, and the inversion has a design instruction attached.

The Cromwell result holds where it was found: a creditor whose claim is **personal and unmarketable** is not a defender. Such a claim can be discharged by any solvent successor, the identity of the payer is immaterial to the holder, and the holder loses nothing by waiting to see who offers — which is exactly what makes him available. Arrears do not bind. They price a man's patience.

Where the claim is a **transferable security charged on the order's own revenues**, the finding reverses, for two reasons:

The holder is exposed to sentiment rather than to outcome. A priced asset moves on news. He does not get to wait for the Pretender's declaration on the public debt; he takes his loss on the day the Pretender lands, and takes it whether or not the declaration, when it comes, is favourable.

And a market cannot be bought off. This is the mechanism that actually destroys the old result. A successor regime can pay arrears man by man, as parliament did in 1660, and dissolve the binding. It cannot settle with a market, because the asset is not a bundle of separable claims but one collectively priced instrument, and confidence is not divisible.

To convert creditors into defenders, make the debt tradable. The English state did so between 1692 and 1697 in pursuit of cheaper money, and the political consequence appears nowhere in the debates. It is a by-product, which is the usual way the most durable arrangements arrive.

The revised ranking of bindings runs: deed; marketable claim charged on the order's own revenues; by-product gain; office; personal debt.

And the entry now standing second carries a property nothing else on the list has. A settlement in land is capped by the supply of confiscatable property, and manufactures one enemy for every defender it creates. A settlement in funded debt is uncapped, and manufactures defenders without manufacturing enemies, because the people who service it pay at the brewery and cannot name what they have lost. **That is how a settlement which distributed not one acre in England nonetheless built a default strong enough to survive two armed risings — and it is why it did not need to distribute any.**

Four findings compound.

A binding a restoration can dissolve by proclamation is not a binding. Exposure to treason charges prices at nearly nothing where general pardons are the standard opening move of returning regimes, and every English gentleman in 1689 had

the 1660 Act of Indemnity in living memory. Where a study finds an elite apparently bound by its own complicity, it should check what the last restoration did before treating the complicity as load-bearing.

The strongest binding is sometimes manufactured by the losing side. The Dublin parliament's Act of Attainder of 1689, naming 2,441 persons and repealing the land settlement, converted the whole Irish Protestant interest into defenders more effectively than any grant could have done — because a winner's warning is propaganda and a loser's printed statute is evidence. Look for such a document wherever a group that received nothing defends an arrangement unusually hard.

An association is a coordination technology and not merely a loyalty test. It changes no interests. It makes positions common knowledge, which is the thing an elite cannot generate for itself, and it makes refusal enumerable. Expect one after a shock, and read the list of refusers as the map of the fracture.

And a fraying default can be repaired from outside by an insult. Louis XIV's recognition of the Pretender in September 1701 did in an afternoon what a decade of domestic politics had failed to do, for the same reason the Association worked: it supplied every member of a divided coalition with instant, costless common knowledge that the others were about to close ranks.

A closing discipline, because this module has been about the machinery of self-interest and could be read as cynical.

None of this means the men involved were merely calculating. The Anglican clergyman who would not swear gave up his living for a scruple, and four hundred of them did. Sir John Fenwick died for a cause that was hopeless. Scottish ministers and Irish landholders and London merchants all believed things, some of them sincerely and at cost. What the framework claims is narrower and harder to escape: that an order which requires its members to be *virtuous* in order to hold together will not hold together for long, and that the orders which last are the ones arranged so that ordinary self-interest does the work — so that a man defending his own estate, his own benefice, his own stock or his own place is defending the whole thing without ever intending to, and would go on doing it even on the days when he despised the people beside him.

By 1701 the settlement of 1689 had that arrangement in England, and it had it in an instrument nobody had designed for the purpose.

A note on sources. Quoted exactly from public-domain primary texts: Joseph Addison, *The Spectator*, No. 3 (3 March 1711), at "the first couple were Tyranny and Anarchy" through "he saw a sponge in his left hand"; and the Land Tax Act 1692, at the registration provisions — orders "registered in course according to the date of the Tally respectively without preference of one before another", the moneys "not to be

divertible to any other use intent or purpose whatsoever", and the naming of the holder as "the person native or foreigner his Executors Administrators & Assignes" — from the text at legislation.gov.uk, which reproduces the printed statute. Sir Robert Howard's statement to the Lords in February 1689 that the peers had all been guilty of high treason if the throne were not vacant is quoted in an earlier module from *The History and Proceedings of the House of Commons*, volume 2 (London, 1742).

Paraphrased and credited to modern scholarship or drawn from the standard reference literature: the Act of Indemnity and Oblivion of 1660 and its function in the Restoration settlement, as established in the companion study of the Protectorate; the Dublin parliament of 1689, its repeal of the land settlement and its Act of Attainder; the Scottish ecclesiastical settlement of 1690; the correspondence of leading Williamite figures with the exiled court at Saint-Germain; the assassination plot of February 1696, the Association and the statutory requirement to subscribe it; the Treason Trials Act 1696 and the attainder and execution of Sir John Fenwick; the land bank projects of Briscoe, Chamberlen, Barbon and Asgill and the failure of the National Land Bank of 1696; the Company of Scotland and Darien; the Irish grants, the commission of 1699 and the Resumption Act 1700; and the death of James II and Louis XIV's recognition of his son in September 1701. The reading of the funded debt as a credible commitment secured by parliamentary guarantee follows the standard account associated with Dickson, Brewer, and North and Weingast, used at second hand and not endorsed in all its particulars.

Contested and uncertain points are flagged, and this module has the most consequential ones in the study so far. **The central claim — that marketability binds creditors where personal claims do not — is a structural argument, and it is not proved by anything in this module.** Its proper test is whether securities prices actually moved on Jacobite news in 1715 and 1745, and whether holders behaved as the argument predicts; that evidence belongs to the module on change and has not been gathered here. If the price series show little movement, or if the Pretenders' declarations promised to honour the debt and the market believed them, the argument weakens substantially and should be revised rather than defended. Contemporary belief in Stuart repudiation is well attested — Addison's sponge is one instance among many — but contemporary belief is evidence of what people feared, not of what would have happened.

The correspondence of Williamite ministers with Saint-Germain is described here without naming individuals or characterising motives, because the interpretation of those letters is genuinely disputed and the argument does not require a resolution. The Fenwick attainder is given on the standard account and the detail of the missing second

witness should be checked. The characterisation of the National Land Bank's failure as demonstrating where capital lay is this study's inference; the specialist literature emphasises technical objections to the projects' fund structures and warns against mapping the bank schemes neatly onto party, and that caution has been recorded in the text. The Company of Scotland's subscription figure and its share of Scottish liquid capital are disputed. Finally, the claim that the English settlement "did not need to" distribute land because it could manufacture defenders in paper is an interpretation offered by this study and not one any contemporary advanced; it should be weighed as a reading of the structure rather than as a recovered intention. Every load-bearing fact in this module is to be re-verified against a primary or standard source before it is built upon.

MODULE 9

To Make His and Their Full Defence

Plurality or foreclosure — the liberties this settlement actually created and the ones it destroyed, both enacted by the same parliament within four years; a writ suspended for the first time in English history three weeks after the crown was accepted; and the one condition that decides whether a protection is worth more than the paper it is written on

The question, and why this case is unusually good for it

The question is whether there was protection from the apparatus, or only rhetoric about it.

Every order has a state apparatus and the ordinary condition is that the apparatus does what it likes to whoever is in front of it. Where that is not the case — where a subject has a real counter-lever, an enforceable protection, a place to stand — the protection came from somewhere, and it did not come from the people at the bottom, because they had nothing to bargain with. It came out of a fight *inside* the hierarchy: a faction with standing and means, in a position of some strength, extracting a concession that neither it nor the apex wants to press to the point of wrecking the arrangement. The concession is written down, and it stays written down after the fight is over, and it accretes. That accreted residue is what a body of liberties actually is.

This case is unusually good for the question because it runs both ways in the same years, in the same chamber, in the same handwriting. The Parliament of England between 1689 and 1701 created the most substantial expansion of criminal-defence rights in English history to that date, and it put a hundred-pound bounty on the head of a Catholic priest. Both columns can be set side by side, and the comparison answers the question of what makes a liberty more than words better than either column could alone.

The Bill of Rights, read for its beneficiary

Take the clauses one at a time and ask, of each, not what it says but *whom it protects*.

Speech. *That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.* This is not a subject's liberty of speech and has nothing to do with one. It is a professional immunity for legislators, in their chamber, in the course of their work — enormously

valuable to the men who have it, and of no direct use whatever to anybody outside the building. Read it as what it is: a faction protecting itself in the place where it operates.

Elections. *That Election of Members of Parlyament ought to be free.* Valuable to electors, and the electorate was a small fraction of adult men, unevenly distributed, in constituencies most of which were controlled by somebody.

Petition. *That it is the Right of the Subjects to petition the King and all Commitments and Prosecutions for such Petitioning are Illegall.* This one is genuinely universal on its face, and its origin is exact: in May 1688 seven bishops petitioned the King against the Declaration of Indulgence and were prosecuted for seditious libel for doing it. Their acquittal on 30 June was the news that the seven signatories of the invitation were celebrating on the day they wrote it. A clause of the settlement is a direct transcription of a grievance suffered by seven men of the highest standing eight months earlier.

Arms. *That the Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law.* A religious test, a class qualification and a saving for any statute anybody cares to pass, in twenty-two words.

No standing army. *That the raising or keeping a standing Army within the Kingdome in time of Peace unlesse it be with Consent of Parlyament is against Law.* This protects the political nation from the crown, and it is one of the effective clauses, because it had an enforcement mechanism attached: the Mutiny Act, without which no military discipline was lawful, and which had to be renewed.

And the procedural clauses — no excessive bail, no excessive fines, no cruel and unusual punishments, jurors duly impanelled, freeholders on treason juries, no grants of fines and forfeitures before conviction. These are universal on their face and they are the weakest things in the document, because they are declaratory. What is excessive? What is cruel and unusual, in a country where the pillory, the whipping cart and hanging in chains continued unaltered for another century and a half? A standard with no measure and no enforcer is an exhortation.

The pattern across the whole instrument is consistent and it is the first thing to record. **The clauses aimed at the crown are precise, and several of them carry enforcement machinery. The clauses aimed at protecting the subject from the state in general are declaratory, and carry none.** That is not hypocrisy; it is a document produced by a faction that had just fought a king, listing the things the king had done to it. It is a bill of the grievances of the political nation, and it reads exactly like one.

And underneath all of it sits the structural fact that governs everything in this module: **nothing was entrenched.** The Bill of Rights is an ordinary Act of Parliament.

Every word of it can be repealed by a later majority in an afternoon. There is no superior law, no written constitution, no court that can set aside a statute. Whatever protection existed rested entirely on the political balance of the moment, and on nothing else.

That proposition was tested immediately.

Three weeks

On 16 March 1689 — three weeks after William and Mary were proclaimed, and eleven months before the Bill of Rights received the royal assent — they gave the royal assent to *An Act for Impowering His Majestie to Apprehend and Detaine such Persons as He shall finde just Cause to Suspect are Conspireing against the Government*.

It suspended the operation of the Habeas Corpus Act, empowering the Privy Council to arrest on suspicion of treason and to hold without bail or trial. The writ of habeas corpus had never been suspended in England before. Two further suspension Acts followed in the same year, covering persons in prison on 25 April and on 25 May. The writ was suspended again in the invasion scare of March 1696, and repeatedly across the eighteenth century.

Two things about those statutes are worth holding.

The first is the timing. The settlement that is remembered as the foundation of English liberty invented the suspension of habeas corpus within a month of taking office, and did it three times in its first year.

The second is a proviso. The Acts contained a saving for the privileges of Parliament: members of both Houses were exempt. The statute that empowered the state to detain Englishmen without bail or trial excluded, by name of their status, the men who were passing it.

Read the exemption clause. It is the map. Wherever a state suspends a protection and carves an exception, the exception describes exactly the population the protection was for. Here the drafters told you, in a proviso, that the liberty of the subject was a thing they were prepared to remove from subjects and not from themselves — and they told you it in March 1689, before a word of the Bill of Rights had been drafted.

The great gain, and where it came from

Now the other column, and it is genuinely great.

In 1696 Parliament passed *An Act for regulateing of Tryals in Cases of Treason and Misprision of Treason*, and what it did requires knowing what preceded it. For centuries a person accused of the gravest crime in English law had no right to counsel; could not

compel his witnesses to attend; could not have such witnesses as did attend put on oath, so that their evidence was worth less than the prosecution's; and was not given a copy of the indictment specifying what he was charged with. The crown was always represented by counsel. The defendant stood alone, ignorant of the charge, arguing against a professional.

The Act provided that a person indicted for treason

> *shall have a true Copy of the whole Indictment but not the Names of the Witnesses delivered unto them or any of them Five Days att the least before hee or they shall bee tryed for the same whereby to enable them and any of them respectively to advise with Counsell thereupon to plead and make their Defence*

on payment of a fee not exceeding five shillings; and that every such person

> *shall bee received and admitted to make his and their full Defence by Counsel learned in the Law and to make any Proof that hee or they can produce by lawfull Witnesse or Witnesses who shall then bee upon Oath for his and their just Defence*

Up to two counsel, permitted to examine, cross-examine and address the jury on the merits. Defence witnesses summoned by process and sworn. A copy of the jury panel. Two witnesses required to convict. A three-year limitation on prosecution.

That is the arrival of the defence lawyer in English criminal procedure, and the beginning of the adversarial trial.

Where did it come from? Not from below, and not from principle in the abstract. From a decade and a half of factional slaughter that had frightened everybody who might one day be in the dock.

The Popish Plot trials of 1678–80 convicted and executed a series of men on evidence that was known within a few years to have been perjured. The Rye House trials of 1683 killed Lord Russell and Algernon Sidney; Sidney was convicted with only one witness against him, the second being supplied by his own unpublished manuscript, read out in court as though a book were a witness. Even Jeffreys had conceded that it was hard for a man on trial for his life to have no counsel when the crown had several.

The Whigs had been the victims in 1683. After 1689 the Tories could see themselves as the next candidates, because the machinery had not changed and only the hands on it had. Bills were pressed from 1689 and repeatedly blocked. The Act passed in 1696.

It passed when both sides could imagine standing in the dock. That is the mechanism, and it is the central finding of this module.

Two further things about it deserve recording, and they pull in opposite directions.

The first is the limit of its class. Treason is the crime of the political nation. This was not a reform of felony trials; a man accused of stealing a sheep still had no counsel, and would have none until 1836 — a hundred and forty years later. The protection was granted for the crime that gentlemen commit, by gentlemen, because gentlemen were being tried for it.

The second is the drafting, and it is the reason the first thing matters less than it looks. The statute does not say *gentlemen*, or *peers*, or *persons of quality*. It says **every such Person soe accused and indicted**. The words are general. And a protection won by a faction and drafted in general words becomes, a century or two later, the precedent by which the argument is made for everyone: if a man on trial for treason may have counsel because otherwise the contest is unequal, on what principle is a man on trial for his life for felony denied one? That argument was made, at length, in the eighteenth and early nineteenth centuries, and it won.

Stated for the card: the residue mechanism is generality of drafting. A faction wins a protection for itself out of its own fear; the draftsman, having no reason to be specific about the beneficiary, writes it in universal terms; and the universal terms outlive the fear and become the instrument by which the protection is later widened to people the original faction would never have granted it to. The faction supplies the motive; the drafting supplies the machinery; and the two are separable, which is why liberties accrete rather than merely rotating.

And circumvented in the same year

The Act received the royal assent in January 1696. Within the year, Parliament went round it.

Sir John Fenwick was taken as a Jacobite conspirator. Two witnesses were needed to convict him under the statute Parliament had just passed, and one of the two was got out of the country before he could testify. So Parliament proceeded by bill of attainder — a legislative sentence requiring no trial, no witnesses and no defence — and Fenwick was executed in January 1697.

The body that had granted the protection legislated round it in the first case where it bit, and did so within twelve months.

Where the legislature is sovereign, a protection has exactly one gap, and the gap is the legislature. No court could have helped Fenwick, because no court in England could set aside an Act of Parliament. The Bill of Rights had abolished the crown's power to suspend laws; it left entirely intact Parliament's power to suspend,

repeal or override anything at all, including its own guarantees, by simple majority, at any time.

And yet — the honest qualification — the Act was not repealed, and the attainder was not repeated. Whatever else the Fenwick case shows, the boundary that was crossed was recognised as a boundary, the crossing was expensive in reputation, and the statute stood and became permanent. A protection that can be overridden is not worthless. It is merely worth the political price of overriding it, and this case shows that the price was already real by 1697.

The judges

The Act of Settlement of 1701 contains what may be the most durable protection the whole settlement produced: that judges' commissions be made *quamdiu se bene gesserint* — for so long as they conduct themselves well, rather than during the King's pleasure — that their salaries be ascertained and established, and that they may be removed only upon the address of both Houses of Parliament.

Its origin is again a factional memory rather than a theory. Charles II and James II had removed judges who gave inconvenient decisions, and James's remodelled bench had obligingly found in *Godden v Hales* that the King could dispense with the Test Act. A bench the crown can dismiss is a bench that will find for the crown, and every faction in the political nation had by 1701 seen a bench packed against it or expected to.

Note also the fuse. The Act's provisions were not to take effect until the Hanoverian succession, which meant 1714. And judges' commissions continued to lapse on the demise of the crown until 1760, so that every new reign began with the bench dependent on reappointment. The best protection in the settlement was granted with a thirteen-year delay and a hole in it that took another forty-six years to close.

The rest of the gains, and the origin of each

The pattern holds without exception and is worth setting out plainly.

The right to petition came from the prosecution of seven bishops.

The provision in the Act of Settlement that no pardon under the great seal shall be pleadable to an impeachment by the Commons came from 1679, when Charles II pardoned the Earl of Danby to stop his impeachment. A faction that had been robbed of a weapon twenty-two years earlier wrote the remedy into the statute book at the first opportunity.

The Triennial Act of 1694 came from the Country interest's long fight against a parliament that sat for eighteen years.

The Toleration Act of 1689 came from the Church's need to detach the dissenters from James, who had been courting them over the Church's head, combined with the Whigs' interest in their support. And note which of the two available concessions was made: comprehension, which would have brought moderate dissenters *inside* the established church and therefore into office, failed. Toleration, which left them outside and out of office, passed. **The cheaper concession is the one that admits people to worship without admitting them to power**, and it is the one a hierarchy will make.

The lapse of the Licensing Act in 1695 came, as the previous module established, from a quarrel about the Stationers' Company's monopoly over the works of classic authors.

Not one of these came from a demand from below. Every one of them came from a fight inside the hierarchy, and in most cases from a specific injury suffered by a specific group of powerful men within living memory. That is exactly what the framework predicts, and this case confirms it without a single exception this study has been able to find.

The losses

Now the other column, which the familiar account of these years omits.

Catholics in England. In 1700 Parliament passed *An Act for the further preventing the Growth of Popery*, reciting that there had lately been a greater resort into the kingdom of popish bishops, priests and Jesuits, who did openly and in insolent manner affront the laws. It provided that any person apprehending a popish bishop, priest or Jesuit and prosecuting him to conviction for saying Mass should receive **one hundred pounds** from the sheriff. It provided that any such person saying Mass, and any papist who should

> *keepe Schools or take upon themselves the Education or Government or Boarding of Youth in any Place within this Realme*

should on conviction be adjudged to **perpetual imprisonment**. And it provided that after 10 April 1700, papists were disabled from purchasing lands.

Set the two statutes side by side, because they are four years apart and the same body passed both.

In 1696 that Parliament gave a man accused of treason a copy of his indictment, two counsel, sworn defence witnesses and a rule requiring two witnesses to convict, so that he might make his full defence.

In 1700 the same Parliament put a hundred-pound bounty on a priest, made teaching a child punishable by imprisonment for life, and forbade a class of Englishmen to buy land.

Catholics in Ireland, where the apparatus was heavier and older: disarmed in 1695, their houses searchable for arms; their schoolmasters criminalised and their foreign education penalised in the same year; their bishops and regular clergy banished in 1697. And in 1704, just beyond this study's period but set up entirely within it, an Act enforcing gavelkind on Catholic estates — division among all the sons at the father's death — unless the eldest conformed to the Church of Ireland, in which case he took the whole. That is a statute designed to dissolve a landed class by inheritance arithmetic over three generations, and to pay a premium to whichever son would change his religion.

Anti-Trinitarians, excluded from the Toleration Act by design and disabled by the Blasphemy Act of 1698; and in Scotland, under the Blasphemy Acts, a student of twenty hanged in January 1697.

The nonjurors, about four hundred clergy including an Archbishop of Canterbury, deprived of freeholds for declining an oath.

The Scottish episcopalian clergy, turned out of their parishes after 1690.

And one loss that is structural rather than penal, and that this study should state carefully because it cuts against the grain of the settlement's own account of itself.

The Bill of Rights abolished the crown's power to suspend laws, and the power of dispensing with laws as it had lately been assumed and exercised. Those powers were genuinely dangerous, their abolition was the central constitutional achievement of the settlement, and nothing here questions that.

But look at what they had last been used for. James II's Declarations of Indulgence had suspended the penal laws and the Test Acts, and their effect — whatever his purposes, which were contested then and are contested now — was to relieve Catholics and Protestant dissenters from statutes that punished them for their worship. After 1689 no such relief was possible from any source except Parliament.

And Parliament did not want to give it. It gave dissenters an exemption from penalties and no more, and it gave Catholics the Popery Act.

So the abolition of a dangerous prerogative removed the only instrument by which a persecuted minority in England had ever actually been relieved, and transferred the power to relieve them to a body that had no intention of doing so.

A check on arbitrary power is not the same thing as a liberty, and a case may run both ways at once: the same clause that prevented a king from setting aside the law also guaranteed that the law, however oppressive, would now be set aside for nobody. Catholic relief in England took another seventy-eight years, and when it came in 1778 it produced a week of riots.

What makes a liberty more than words

Put the two columns together and they answer the question.

The reciprocity test: a protection is durable to the extent that the faction which grants it can imagine needing it.

Run every item in this study through it and the results are uniform.

Treason trial protections. Symmetrical fear — Whigs had been killed in 1683 and Tories expected to be killed next. Passed, stood, and eventually widened to everybody.

Judicial tenure. Symmetrical — every faction had seen or expected a bench packed against it. Passed, and is still in force three centuries later.

Freedom of speech in Parliament, free elections, no pardon against impeachment, no standing army without consent. All symmetrical within the political nation. All durable.

Habeas corpus. The people it would have protected in 1689 and 1696 were Jacobites, who were outside the coalition; and members of both Houses were exempted from the suspension by proviso. Suspended within three weeks, three times in the first year, and repeatedly for the next century.

Toleration for Protestant dissenters. Partly symmetrical — dissenters were an electoral interest in the boroughs and a body of men whose votes and money the Whigs needed. Passed, in the cheaper of the two available forms, and stood.

Relief for Catholics and anti-Trinitarians. No faction inside the coalition needed it, could imagine needing it, or wanted it. None was given, and the disabilities were increased.

The test predicts every case, and it predicts the losses as accurately as the gains.

And it requires one further condition to be operative, which is the sharpest thing this module has to offer. Reciprocal fear only produces protections where the fear is *credible*, and what makes it credible is the genuine expectation of being out of power.

That condition was met in England after 1689 and had not been met before. The Triennial Act required elections every three years; party competition was real and bitter; ten general elections were held between 1689 and 1715; and power actually changed hands, more than once, within the memory of every man voting on these

statutes. A Tory in 1696 could look at a Whig ministry and calculate his own exposure with precision, because he had been in office two years earlier and expected to be again.

Liberty, in the sense of enforceable protection from the apparatus, is a by-product of the credible expectation of losing power. Where a faction expects to hold the apparatus permanently, it builds no protections, because protections are a cost with no offsetting benefit. Where it expects to lose the apparatus and to face it, it builds them, and it builds them for the crimes it expects to be charged with and in the courts it expects to stand in.

Which explains, without any need for hypocrisy or inconsistency, why the same men who gave a treason defendant counsel put a bounty on a priest. They expected to be tried for treason. They did not expect to be Catholic.

Reading plurality and foreclosure against the framework

The principal contribution is the reciprocity test and the alternation condition that activates it.

A protection is durable to the extent that the faction which grants it can imagine needing it, and reciprocal fear becomes operative only where losing power is a credible expectation. Where a study finds an unusually strong protection, it should look for a group with standing and means that had recently been on the receiving end of the thing now prohibited, and for a political system in which that group expects to be on the receiving end again. Where it finds a protection that is repeatedly suspended, it should check whether the people it would protect are inside or outside the coalition that wrote it.

Four findings compound.

The exemption clause is the map. When an order suspends a protection, the proviso naming who is exempt describes, in the drafters' own hand, the boundary of the class the protection was actually for. The habeas corpus suspensions of 1689 excluded members of both Houses. Nothing else in this study locates the settlement's real constituency so precisely in so few words.

Generality of drafting is the residue mechanism. Factions win protections out of self-interest and draftsmen write them in universal terms because there is no reason to do otherwise. The self-interest expires; the universal words do not; and they become the instrument by which a later argument extends the protection to people the original faction would have refused. This is how a body of liberties accretes rather than merely rotating between whoever is currently frightened, and it is why a protection won for gentlemen accused of treason in 1696 was the precedent for one given to sheep-stealers in 1836.

Where the legislature is sovereign, a protection has exactly one gap and the gap is the legislature. The Bill of Rights removed the crown's suspending power and left Parliament's untouched; the Treason Trials Act was circumvented by attainder within the year. But the qualification matters as much as the finding: the Act stood, the attainder was not repeated, and a protection that can be overridden is worth the political price of overriding it — which is a real and rising price in a system with genuine alternation.

And abolishing a prerogative can extinguish a liberty. The dispensing power was dangerous and its abolition was right, and it was also the only instrument by which anybody in England had ever been relieved of the penal laws. Where a study finds an arbitrary power destroyed, it should ask what that power had last been used for and who is now without a remedy. The answer is frequently that a check on the apex has been purchased by a minority which was not consulted and which had been the prerogative's only beneficiary.

A closing note on the shape of the whole answer, because it bears on the question this module exists to ask.

The liberties produced in these years were real. Counsel for the accused, sworn defence witnesses, a copy of the indictment, two witnesses for a capital conviction, judges who cannot be sacked for a verdict, a Parliament that must meet, a press without a licenser, and a right to petition without prosecution — these are not rhetoric, they were enforceable, and most of them are still in force. It would be a serious error to write them off as decoration because of how they were obtained.

But how they were obtained is what determined who got them. They were built by a few thousand men, out of their own fear, for the situations they expected to find themselves in, and they stopped precisely where that fear stopped. The Catholic labourer in Munster and the Presbyterian cottar in Ayrshire and the London porter were not in anybody's calculation, and nothing in this settlement was built for them. What they eventually received, they received a century or two later, out of the general words that the men of 1696 had no particular reason to make specific.

That is not nothing. It is also not what the settlement's later admirers have described.

A note on sources. Quoted exactly from public-domain primary texts: the Bill of Rights 1689, at the clauses on freedom of speech in Parliament, free elections, the right of the subjects to petition, arms for Protestants "suitable to their Conditions and as allowed by Law", the standing army, excessive bail and fines, cruel and unusual punishments, jurors, and grants of fines and forfeitures before conviction, from *Statutes of the Realm* as reproduced at legislation.gov.uk; the Treason Trials Act 1696

(7 & 8 Will. 3 c. 3), at "shall have a true Copy of the whole Indictment but not the Names of the Witnesses ... Five Days att the least before hee or they shall bee tryed" and at "shall bee received and admitted to make his and their full Defence by Counsel learned in the Law and to make any Proof that hee or they can produce by lawfull Witnesse or Witnesses who shall then bee upon Oath", from *Statutes of the Realm* volume 7 as reproduced by British History Online; the long title of the Habeas Corpus Suspension Act 1688 (1 Will. & Mar. c. 2), at "An Act for Impowering His Majestie to Apprehend and Detaine such Persons as He shall finde just Cause to Suspect are Conspireing against the Government", and the marginal provisions of the second and third suspension Acts including the proviso for privileges of Parliament, from legislation.gov.uk; and the Popery Act 1698 (11 Will. 3 c. 4, enacted 1700), at the recital concerning the resort of popish bishops, priests and Jesuits, at the perpetual-imprisonment provision covering any papist who shall "keepe Schools or take upon themselves the Education or Government or Boarding of Youth in any Place within this Realme", at the hundred-pound reward, and at the disabling of papists from purchasing lands after 10 April 1700, from *Statutes of the Realm* volume 7 as reproduced by British History Online.

Paraphrased and credited to modern scholarship or drawn from the standard reference literature: John Langbein's account of the Treason Trials Act as the advent of defence counsel and of the Popish Plot and Rye House trials as its background; the procedural position of the accused before 1696 and the extension of counsel to felony defendants in 1836; the Fenwick attainder of 1696; the judicial tenure provisions of the Act of Settlement 1701, their commencement at the Hanoverian succession, and the continuing lapse of commissions on the demise of the crown until 1760; the failure of the comprehension scheme of 1689 and the scope of the Toleration Act; the Irish penal statutes of 1695, 1697 and 1704 including the gavelkind provision; the Blasphemy Act 1698; and the pardon of the Earl of Danby in 1679 as the origin of the impeachment clause in the Act of Settlement.

Contested and uncertain points are flagged. The claim that the writ of habeas corpus had never been suspended in England before March 1689 is the standard statement and is repeated here; specialists on the history of the writ have complicated what "suspension" meant in practice, and at least one documented case shows King's Bench using the writ in 1696 while a suspension statute was in force, to bail a man committed by a justice of the peace who was not empowered to commit under the Act. The number of habeas corpus suspensions across the eighteenth century is described generally rather than enumerated. The interpretation of James II's Declarations of Indulgence as having in effect relieved Catholics and dissenters is stated here without

any claim about his purposes, which were disputed at the time and remain so; the structural point stands independently of motive but the passage should be read as an argument rather than a finding. The characterisation of the Treason Trials Act's general drafting as the mechanism by which the protection was later widened is this study's reading and is not asserted by the scholarship cited; the historical fact of the 1836 extension is not in dispute, but the causal link through the statute's wording is an inference. The dating conventions for the Treason Trials Act (1695 or 1696) and the Popery Act (1698 or 1700) differ between authorities according to whether the parliamentary session or the royal assent is used; assent dates are used here. Every load-bearing fact in this module is to be re-verified against a primary or standard source before it is built upon.

MODULE 10

Paid in Sixpences

Change and collapse — an arrangement that did not collapse, and the reasons; two armed risings that failed for the same reason and not the reason usually given; a financial catastrophe that should have brought the Stuarts back and did not; and a correction to what the previous module claimed about creditors

Why this module has a different job

Most modules of this kind are written about an order that fell, and their task is to establish what fractured, when, and who did it.

This arrangement did not fall. The settlement made between 1689 and 1701 was challenged by armed force twice, survived both, absorbed a financial collapse that ruined thousands of its own supporters, and is — with alterations — the constitution the United Kingdom is governed under now. So the question is not what broke it. The question is what held, and the answer has to be tested against the two moments when it might not have.

Those moments are the risings of 1715 and 1745, and there is a third test that nobody designed, which is the South Sea collapse of 1720. Between them they give this study something it has not previously had: three occasions on which the arrangement was put under load, with different loads, and did not give way.

And there is one specific claim to be tested, because the previous module made it and flagged it as unproven. That module argued that a marketable debt binds its holders in a way that a personal debt does not, and named 1715 and 1745 as the evidence that would settle it. The evidence has been sought and it does not confirm the claim as stated. It requires a correction, and the correction is the most useful thing in this module.

The rule, stated before the evidence

The framework's account of change is not a preference and it is not a comment on who deserves what. It is an observation about who is physically capable of altering a structure, and it runs as follows.

Violence made the arrangement. The settlement priced everybody's position in it. The hierarchy defends it by default, because each man defending his own position defends the whole. It follows that structural change — a change in who holds the apex,

or in the terms on which everything below is held — almost never comes from below. A functioning state apparatus defeats an unarmed or lightly armed population, however numerous and however angry, because that is what a state apparatus is for and because the people at the bottom have no organisation, no money, no professional soldiers and no way to coordinate at scale.

So the sources of real change are three. **Fracture inside the hierarchy** — a faction with standing and means that has stopped benefiting and can act. **Conquest by another hierarchy** — an outside apparatus with soldiers of its own. Or **exhaustion** — a state so drained militarily or fiscally that it can no longer project force, and must therefore reprice the arrangement to keep what it can.

Popular energy is not absent from any of this. It can raise the price of an option, make a faction's threat credible, supply the crowd that a faction points at a target, and change what an apex calculates. But it is an input to a repricing conducted by people with standing, not the agent of the change. The peasant, the collier, the weaver and the urban labourer do not defeat an army.

This case supplies an unusually clean run of evidence for that, because it contains a great deal of popular energy and a great deal of structural change, and they are almost entirely disconnected.

The ledger: what changed, and who made each change

Set out the structural alterations of the period and attribute each one.

1688–89, the removal of the king. Elite fracture — seven signatories, a defecting officer corps, and a Convention — combined with an invited foreign army. The crowd was present in December 1688 as rioters and, at Faversham, as the fishermen who caught the king by accident, and was the proximate agent of nothing.

1694, the funded debt. Made by ministers and City subscribers under fiscal pressure. No popular input of any kind.

1695, the end of pre-publication censorship. Made by a Commons committee arguing about the Stationers' Company.

1696, the Treason Trials Act. Made by a political nation frightened of its own machinery.

1701, the Act of Settlement. Made by Parliament, under the pressure of a dynastic accident — the death of Anne's last surviving child — and finished by an external event, Louis XIV's recognition of the Pretender.

1707, the Union with Scotland. A Scottish ruling class that had lost a large share of the nation's liquid capital at Darien, could not influence a foreign policy made in London, and repriced its position; and an English government that wanted the

northern flank closed. Two hierarchies negotiating. The Scottish crowd was violently against it, in Edinburgh, Glasgow and Dumfries, and it passed anyway.

1716, the Septennial Act. Made by the winners of 1715, about themselves.

1746–47, the dissolution of the Highland social order. Made by statute after a military victory.

Now set beside that the popular disturbances of the same period. The famine and food riots of the 1690s. The recoinage crisis of 1695–96, which seized up wage payment across the country. The Sacheverell riots of 1710, when London mobs pulled down dissenting meeting houses. Repeated turnpike, food and excise riots throughout.

Not one of them produced a structural change. The Sacheverell tumults are the closest thing to an exception and they prove the rule precisely: a genuine popular explosion, on a scale that alarmed the government, whose entire political consequence was a Tory election victory delivered through the ordinary electoral machinery by a faction that had harvested the energy. The crowd supplied the noise. The faction supplied the change, and kept it.

1715: a real fracture that still failed

The rising of 1715 is the best available test of the framework's first mechanism, because the fracture was genuine, large, and had exactly the character the framework says produces change.

The Tory party had held office from 1710 to 1714 and had made the Peace of Utrecht. On the accession of George I in 1714 it was not merely turned out but proscribed — excluded from office, from the commissions of the peace, from the army and from the court, comprehensively and, as it turned out, for four decades. Its two leading figures fled: Bolingbroke, impeached, went to the Pretender and became his secretary of state; Ormonde followed. The Earl of Oxford went to the Tower. The Earl of Mar, who had been a Secretary of State, was snubbed at court, went north, and raised the standard at Braemar on 27 August 1715.

That is the framework's condition met in full. A group with the highest standing and real means had stopped benefiting from the arrangement — not marginally, but totally, by exclusion from everything — and it moved.

And it failed. Sheriffmuir on 13 November was indecisive, which for a rising is a defeat; the English contingent surrendered at Preston the following day; the Pretender arrived in December to a collapsing cause and left in February.

The reason it failed is the module's first finding and it is not the reason usually given. It was not that the government was strong; the Hanoverian regime in 1715 was new,

unpopular in much of England, and had a small army with most of its best troops abroad. It failed because **the fracture never reached the people who held the assets.**

Run the list. The Bank, the East India Company and the holders of government stock did not fracture. The Church of England establishment did not fracture — a Catholic Pretender guaranteed that. The Irish Protestant interest did not fracture and could not. The Presbyterian establishment in Scotland did not fracture. The great Whig landed families did not fracture. And, decisively, the mass of the English Tory gentry — proscribed, resentful, and Jacobite in their toasts — did not rise. A few hundred did, in Northumberland and Lancashire, and were taken at Preston.

A fracture produces change only where the fracturing group holds something the arrangement cannot run without. The proscribed Tories held standing, grievance, numbers in the counties, and no asset the state required. The state required money, and the money was elsewhere and stayed there.

The winners reprice

The response to 1715 is worth recording because it cuts directly against the previous module's finding about liberties, and honesty requires putting it in.

The Riot Act of 1715 made it a felony for twelve or more persons unlawfully assembled to fail to disperse within an hour of a magistrate reading the proclamation. That is a cost-column instrument aimed at the crowd.

The Septennial Act of 1716 extended the maximum life of a parliament from three years to seven — and did so by a parliament extending its own life, the one then sitting included.

The previous module argued that enforceable liberty in this period was a by-product of the credible expectation of losing power, and that what made the expectation credible was frequent elections and genuine alternation: ten general elections between 1689 and 1715 with power actually changing hands. The Septennial Act reduced that. It cut the frequency of elections by more than half, and it did so in the year after the winning faction had proscribed the losing one.

The Whig ascendancy that followed was long, stable and substantially uncontested, and the eighteenth century produced far less in the way of new protections than the two decades before 1716. That is what the reciprocity test predicts once alternation is removed, and it should be recorded as a confirmation of the finding running in the unwelcome direction. **A faction that stops expecting to lose stops building protections, and its first act on securing that position is frequently to make losing less likely.**

1720: the test nobody designed

Then came the test that no strategist would have dared to design, and it is the sharpest single piece of evidence in this module.

In 1720 the South Sea Company undertook to convert a large part of the national debt into its own shares. The share price rose from something over a hundred to around a thousand and collapsed to about a hundred and twenty-four by December. Thousands of investors, many of them precisely the people the settlement depended on, were ruined. The government was implicated to the highest levels; ministers had taken stock; a parliamentary inquiry followed and the Chancellor of the Exchequer went to the Tower.

The financial system that this study has identified as the settlement's principal binding had just publicly disgraced itself and destroyed the fortunes of its own constituency, five years after an armed rising and with a Pretender across the Channel.

And nothing happened. Arthur Onslow, who had entered Parliament at the time and later became Speaker, recorded in his family memoirs that he had often wondered that this did not produce some convulsion in the state and a return of the Pretender.

He was right to wonder, and the answer tells you what the binding actually was.

The binding was not the investors' fortunes. It was the state's capacity to tax and the institutions that stood between the state and the lender. South Sea shareholders lost their money; the excise did not stop being collected, the land tax did not stop being voted, the Bank of England did not fail, and Walpole's reconstruction of the debt proceeded. A restored Stuart could have offered a ruined shareholder nothing at all — he could not give the money back, and he arrived with no revenue, no institutions and no credit of his own.

Which is the first half of the correction the previous module needs. The claim there was that holders of marketable government paper are bound because their asset dies with the regime. What 1720 shows is that the asset can die *without* the regime, and the regime survives — because what the holders are attached to is not the paper's value but the machinery that services it, and that machinery is the state itself.

1745, and what the run actually shows

The rising of 1745 came closer than 1715 in one respect and was far weaker in the one that mattered.

Charles Edward Stuart landed in July with almost nothing, raised the standard at Glenfinnan in August, took Edinburgh, destroyed a government army at Prestonpans in September, crossed into England in November, took Carlisle, and reached Derby on

4 December — a hundred and twenty-odd miles from London, with the best British regiments in Flanders.

At Derby the council of war turned back, and the reason it turned back is this module's second finding. The English Jacobites had not risen. The promised French landing had not come. The army that had marched into England was, and remained, overwhelmingly Scottish. What the leadership discovered at Derby was that the English elite fracture on which the entire plan depended did not exist — the Tory gentry that drank the King over the Water did not muster a regiment for him.

The retreat began on 6 December, the day the Jacobites called Black Friday. Culloden followed in April 1746.

And in London, when the news from Derby arrived, there was a run on the Bank of England.

The account that has come down — through a Victorian compilation quoting an earlier and unnamed authority, and it should be read with that provenance in mind — is that the Bank's interests being involved in those of the state, its creditors flocked in crowds to obtain payment for their notes. Payment was not refused. The directors employed a stratagem: agents were sent in with notes and **paid in sixpences**, slowly; and since those who came first had priority of payment, the agents carried the specie out of one door and brought it back in at another, so that genuine noteholders could never reach the counter. By this artifice, the account concludes, the Bank preserved its credit and literally faced its creditors.

Now read that carefully, because it does not say what the previous module predicted it would say.

The individual holders ran. They did not rally to the regime, form associations to defend it, or take up arms. They queued at the Bank to convert paper into metal — which is to say, they attempted to exit the arrangement as fast as they could get to the front of the line. That is precisely what a rational holder of a marketable asset does when political risk arrives, and it is the opposite of defending.

So the previous module's claim, as stated, is wrong, and the correction is this.

Marketability binds the institution, not the individual holder.

An individual creditor holding a transferable security responds to a political shock by selling or converting. He cannot be bought off by a pretender — that part of the argument stands, and it distinguishes him from the New Model soldier who could be paid his arrears and sent home — but neither does he fight. He liquidates. His exposure makes him a bad recruit for the other side and it does not make him a defender.

What is bound is the **corporate** creditor: the Bank of England, and behind it the East India Company and the South Sea Company. Those bodies' entire capital

consisted of a loan to this specific regime, charged on this specific regime's taxes. They could not liquidate, could not flee, and had no asset that would survive a change of regime. Their directors were therefore the most committed defenders in the kingdom, and in December 1745 they behaved like it — improvising at a counter, in sixpences, to keep the institution alive for another week.

That is a considerably more useful finding than the one it replaces, because it identifies the mechanism precisely and it explains all three tests at once. In 1720 the individual holders were ruined and the institutions survived and so did the regime. In 1745 the individual holders ran and the institution held and so did the regime. The binding is not distributed across thousands of stockholders whose loyalty could be counted. It is concentrated in a handful of chartered bodies which have no exit.

Stated for the card: **a funded debt binds through its institutions rather than through its holders. Where the debt is held directly by dispersed individuals, expect flight under stress; where it is intermediated through corporations whose entire capital is a claim on this regime, expect those corporations to behave as the order's most reliable defenders, because they are the only creditors who cannot sell.** The design question for any order using this technique is therefore not how many creditors it has but how much of the debt sits inside bodies that cannot leave.

And a caution about the evidence, since this module was written to test a claim. This is a single, well-attested but late-reported episode, and no reliable price series for Bank stock or government annuities across the crises of 1715, 1720 and 1745 has been obtained for this study. The correction offered above rests on the behaviour observed rather than on prices, and it should be re-tested against the price data by anyone who can reach it. What can be said with confidence is that the original claim, in the form the previous module stated it, is not supported by what the run of 1745 shows.

Culloden, and the buying-out of a rival hierarchy

What followed the rising is the one genuinely structural change of the whole post-settlement period, and it is a textbook case of a state using a military victory to dissolve a rival hierarchy rather than merely to punish one.

The Disarming Act and the Act of Proscription of 1746 removed Highland weapons and, in the notorious Dress Act, Highland dress. Estates were forfeited and administered by commissioners. Those are the ordinary instruments of suppression and they are not the interesting part.

The interesting part is the Heritable Jurisdictions (Scotland) Act of 1747, which abolished the private courts — the regalities and hereditary sheriffdoms — through which Scottish magnates and Highland chiefs had exercised justice over their own

people, and **compensated the holders**, to a total in the region of one hundred and fifty thousand pounds.

Read that as a structural operation. The chief's power had two components: he was the head of a kinship society, and he was a magistrate with his own court and his own jurisdiction over his tenants. The Act removed the second and paid for it, converting a man who had been a petty sovereign into a landlord with rents. It did not have to persuade him of anything, form his children, or occupy his glen indefinitely. It bought the office and left him the estate.

That is the Menu's *Buy* family applied not to an individual rival but to an entire subordinate hierarchy, and it is why the Highlands never rose again. The clearances that followed within two generations were carried out by the chiefs' own descendants, on their own tenants, for rent — which is what a man does when he has been converted from a chief into a landlord and paid for the conversion.

Where the people were

It remains to say where the population was during all of this, because the answer is consistent and it is the module's confirmation of the framework's hardest claim.

They were in the crowd at Sacheverell's trial and in the food riots and in the recoinage queues and in the anti-Union mobs of Edinburgh. They were also, in Scotland, in the Jacobite ranks — and the point about that should be made carefully rather than skated over. The men who fought at Prestonpans and Culloden were overwhelmingly ordinary Highlanders and north-eastern Scots, and they were there because their chiefs and lairds brought them, under obligations of tenure and kinship. That is not a popular rising. It is a hierarchy mobilising its dependants, which is exactly what the framework says a hierarchy does.

And in England, where there was no hierarchy willing to mobilise anybody, no popular Jacobitism materialised at all, in a country where Jacobite sentiment in the alehouses was real and widely reported. Sentiment without a faction to organise it produced nothing — not in 1715, not in 1745, not ever.

Nothing in this period was changed by people below the level of those who could command men, money or votes. The energy was real; it was harvested, priced in, or dispersed by soldiers.

Reading change against the framework

The principal contribution is the correction on creditors, and it should replace the previous module's formulation rather than sit beside it.

A funded debt binds through its institutions, not through its holders. The individual holder of a marketable security is exposed to political risk — which stops him being available to a challenger, and distinguishes him permanently from the soldier owed arrears, who can be paid off by anybody solvent — but his response to a shock is to liquidate, not to defend. In December 1745 the Bank's noteholders ran for the counter. What defended the arrangement was the corporate creditor: a chartered body whose whole capital was a claim on this regime's taxes, which could not sell, could not flee, and therefore had no strategy available except keeping the regime alive. The design question is not how many creditors an order has but how much of its debt sits in bodies with no exit.

Three findings compound.

A fracture produces change only where the fracturing group holds something the arrangement cannot run without. The proscribed Tories of 1715 met every other condition — standing, means, total exclusion from benefit, leaders in exile, a claimant available — and failed, because what the state needed was money and the money never fractured. Where a study finds a large elite grievance that produced nothing, it should ask what the grievers held, and expect the answer to be: status, and no asset the apex required.

A faction that stops expecting to lose stops building protections. The Septennial Act of 1716 is the reciprocity test running backwards. Having proscribed its opponents and survived a rising, the winning faction extended its own tenure from three years to seven, and the following decades produced markedly less new protection than the two decades before. Alternation is the condition; remove it and the residue stops accreting.

A military victory can be converted into permanent structural change by buying out the defeated hierarchy's offices rather than by occupying its ground. The Heritable Jurisdictions Act paid Scottish magnates and chiefs to cease being magistrates, and converted a kinship hierarchy into a landlord class in a single statute. Suppression requires garrisons for ever; purchase requires one payment and produces men whose interest is thereafter identical with the state's.

And the standing rule survives this case without a scratch, which is worth saying plainly because the case had every opportunity to break it. Between 1689 and 1747 this order faced two invasions, one dynastic crisis, a war of succession, a famine decade, a currency collapse, the largest financial fraud in European history to that date, and repeated popular disorder. Every structural change that occurred was made by people with standing and means: ministers, subscribers, parliaments, proscribed grandees,

chiefs, and generals. Every popular movement was either harvested by a faction or dispersed by soldiers.

The people at the bottom of this arrangement were angry a great many times across sixty years, in numbers that dwarfed anything the elites could put in the field. They changed nothing structural, and the reason is not that they were docile or badly led. It is that an unarmed population does not defeat a functioning state apparatus, and this one was functioning.

A note on sources. Quoted exactly from public-domain texts: the account of the run on the Bank of England following the news from Derby in December 1745, at "the creditors flocked in crowds to obtain payment for their notes", at the description of agents "paid in sixpences" who "went out at one door with the specie they had received, and brought it back by another", and at "By this artifice ... the Bank preserved its credit, and literally faced its creditors", from *Old and New London* volume 1, as reproduced by British History Online — a Victorian compilation which itself quotes an earlier authority it does not name. Arthur Onslow's recollection that he had "often wondered that this did not produce some convulsion in the State" is quoted from his family memoirs as cited in Weber's article on the national debt and political allegiance, and is therefore given here at second hand.

Paraphrased and credited to modern scholarship or drawn from the standard reference literature: the Hanoverian succession and the proscription of the Tory party; the flight of Bolingbroke and Ormonde and the imprisonment of Oxford; the rising of 1715, Braemar, Sheriffmuir and Preston; the Riot Act 1715 and the Septennial Act 1716; the Union of 1707 and the Scottish popular opposition to it; the South Sea scheme of 1720, the collapse of the share price from about £1,000 to about £124, the parliamentary inquiry and Walpole's reconstruction; the rising of 1745, Glenfinnan, Prestonpans, Carlisle, Derby, the council of war of 5–6 December and Culloden; the Disarming Act, Act of Proscription and Heritable Jurisdictions (Scotland) Act of 1746–47 and the compensation paid under the last; and the Sacheverell riots of 1710.

Contested and uncertain points are flagged, and the most important of them is the evidentiary basis of this module's central correction. **No reliable price series for Bank of England stock or government annuities across 1715, 1720 and 1745 has been obtained for this study.** The correction to the creditor finding therefore rests on observed behaviour in a single well-known episode, reported late and at one remove, and on the outcome of 1720. It should be re-tested against the price data — Neal's work on the London capital market is the obvious place to start — and revised again if the prices tell a different story. The sixpence stratagem itself, though repeated in every account of the episode, is not here traced to a contemporary source and may have

acquired detail in transmission. The compensation figure for the heritable jurisdictions is given as approximately £150,000 and should be checked. The claim that the English Tory gentry failed to rise in either 1715 or 1745 is the standard scholarly position, but the strength and sincerity of English Jacobitism is a genuinely contested field, and historians who take Jacobite sentiment more seriously than this module does would frame the failure at Derby differently — as a failure of communication and French support rather than as evidence that the fracture did not exist. That disagreement is named rather than resolved. Finally, this module's periodisation runs well past the study's stated bound of 1701; everything after that date is used as a test of the settlement rather than as part of it, and is treated at correspondingly lower resolution. Every load-bearing fact in this module is to be re-verified against a primary or standard source before it is built upon.

MODULE 11

The Kingdom Nobody Invaded

The grim accounting — what the settlement cost in the sword column and the metabolic column from the founding to stability; why the war that should have starved Ireland did not, and why the kingdom nobody invaded lost a tenth of its people; and what actually determines whether any of it is remembered

What is being counted, and where the boundaries sit

This module normally counts an order from its founding to its end. This order did not end, so the count runs from the founding violence to the point at which the arrangement stopped being contestable by force — from Monmouth's landing at Lyme in June 1685 to Culloden and its aftermath in 1746. Sixty-one years.

Two columns are counted, and they are different in kind.

The **sword column** is what the violence killed directly: battle, siege, massacre, execution, transportation, and death in captivity. It is the column everyone counts and it is usually the smaller one.

The **metabolic column** is the one that requires explaining. A complex society lifts its population above the land's natural carrying capacity by coordination — by intensive agriculture, by markets that move grain from surplus to deficit, by stores, by transport, by a legal order that makes it worth a man's while to sow. That lift is a debt against the coordination. Break the coordination — burn the crop, drive the cattle, close the market, destroy the mill, put an army on the road at harvest — and the note is called, and it is paid in famine and in the epidemic disease that follows malnutrition. The metabolic column is frequently several times the sword column, and it is almost never in the histories, because nobody signs an order for it.

Three kingdoms, sixty-one years, and the columns do not fall where anyone would predict. That is what this module is for.

The sword column: England

England's is the smallest column in this collection relative to the size of the event, and the smallness is a finding rather than an absence.

1685. Monmouth's rising, and it is the largest item. At Sedgemoor on 6 July the rebel dead and wounded are given at something between a thousand and thirteen hundred, against royal losses usually put at around two hundred. Then the assizes:

something between about two hundred and about three hundred and twenty hanged, the range depending on whether sentences or executions are counted, with the bodies and quartered remains displayed across the five western counties; and eight to eight and a half hundred transported to the West Indies, where an unknown but substantial number died. Argyll's simultaneous rising in Scotland dispersed without a battle and cost its leader his head.

1688. The invasion itself. Two skirmishes: Wincanton on 20 November, a dozen to twenty dead; Reading on 9 December, around fifty. Perhaps sixty or seventy men killed in the whole campaign, in a country of five million, to remove a king.

1689–1746. The state executions: Fenwick by attainder in 1697; the Jacobite executions after 1715, and after 1745 the four lords at Tower Hill and a hundred and sixteen commoners at Carlisle, York and Kennington Common. The prisoners of 1745 were tried in England by decision of the Privy Council, and while they waited on hulks in the Thames off Tilbury they were, according to the surviving prisoner records, available for viewing by paying sightseers who came down the river from Westminster.

Total for England across sixty-one years: something in the low thousands, and most of it in the summer of 1685, before the settlement this study is about had begun.

The sword column: Ireland

Ireland's column is two orders of magnitude larger and it is genuinely uncertain at the top end.

The Williamite War, March 1689 to October 1691. Modern reconstructions give Williamite losses of about ten thousand killed or dead of disease, and Jacobite losses of about fifteen thousand — some twenty-five thousand soldiers, in a war that was fought across an island of perhaps a million and a half people.

The individual actions, with their disputes:

Derry, besieged for a hundred and five days from April to July 1689. The figure for deaths inside the walls is the least secure number in this study. Modern summaries give around four thousand, mostly from disease and hunger; older accounts run to fifteen thousand, and the difference turns on whether the refugees packed in behind the garrison are counted and on which contemporary witness is believed. Several thousand people died inside one city and the true figure is not recoverable.

Newtownbutler, July 1689, where the Williamite claim of two thousand Jacobite dead has been reduced by reconstruction from the regimental rolls to eight or nine hundred — a useful reminder of what a victor's despatch is worth.

Dundalk, the winter of 1689, where Schomberg's army sat in a waterlogged camp and lost several thousand men to disease without fighting anybody. This is the largest single unforced loss of the war and it is nobody's anniversary.

The Boyne, 1 July 1690: the largest engagement ever fought in Ireland, fifty to sixty thousand men present, and total dead usually given as fifteen hundred to two thousand — light for the period, and lighter than every siege in the war.

Limerick, August 1690: some three thousand Williamites killed in the assault and two thousand more dead of disease, against about four hundred Jacobites. The second siege in 1691 cost the Jacobites around eight hundred.

Aughrim, 12 July 1691: four thousand killed with four thousand missing on the standard count, and totals above seven thousand in others. The bloodiest single day in Irish history.

And then the exports. Twelve to fourteen thousand soldiers left for France under the Treaty of Limerick with several thousand dependants — a permanent subtraction from the island's young men, negotiated and shipped.

And the confiscation, which killed nobody and which the accounting must nonetheless carry: something over a million acres, Catholic landholding down from about a fifth to about a seventh of the country by 1703, and a body of penal statute that would run for a century — searchable houses, criminalised schoolmasters, banished clergy, no arms, no land purchase, and from 1704 an inheritance rule designed to break estates into fragments unless the eldest son changed his religion.

There is one contemporary total. George Story, a chaplain who served with the Williamite army and wrote the fullest account of the campaign, calculated that the war had cost over a hundred thousand lives through sickness, famine and battle. That figure is used here as what it is — a participant's estimate, four times the modern military count, and almost certainly high — because it is the only contemporary attempt at the whole sum and because the gap between his number and the reconstructed one is itself the shape of the problem.

The sword column: Scotland

1689–90. The rising under Dundee. Killiecrankie on 27 July 1689 was a Jacobite victory that cost about a third of the Highland force — commonly given as six hundred — and cost the government army more, in a rout. Dunkeld in August, Cromdale in May 1690. Estimates for the whole rising run to fifteen hundred to twenty-five hundred dead on each side, and every figure is an estimate from partisan accounts.

1692. Glencoe. About thirty people killed by soldiers who had been quartered on them for a fortnight and had eaten their food, with more dying of exposure in the

mountains afterwards. By the numbers in this module it is a rounding error. It is also the one that is remembered, and the reason is dealt with below.

1715. Sheriffmuir, indecisive and costly on both sides; Preston, where the English contingent surrendered. Executions and transportations followed on a scale smaller than 1746's and not reliably enumerated here.

1745–46. Prestonpans in September 1745, where a government army was destroyed in a few minutes. Falkirk. Then Culloden on 16 April 1746: about fifty government dead and three hundred wounded, against Jacobite dead usually put at around twelve hundred and fifty — of whom a large proportion were killed after the battle was decided, on the field, in the pursuit, and in the surrounding country, under an order that no quarter be given. Patrols went back the following day and killed perhaps seventy more.

Then the prisoners, and this is the most precisely documented item in the whole accounting because the Scottish History Society published the lists. Three thousand four hundred and seventy people were taken — men, women and children. One hundred and twenty were executed. Eighty-eight died in prison. Nine hundred and thirty-six were transported to the colonies and two hundred and twenty-two banished. Many of the rest were released.

The fate of nearly seven hundred is unknown.

That sentence is the honest ending of every ledger in this collection, and it is worth stopping on. Seven hundred people, in the best-documented aftermath of any event in this study, in a state that kept lists, simply stop appearing in the record. Whatever the true totals in Ireland and the west of England, they are larger than the numbers above by some quantity nobody will ever establish.

The metabolic column, and the surprise

Now the second column, and it does not fall where the framework's expectation would put it.

The expectation. A three-year war fought across the whole of Ireland, with armies of twenty to thirty thousand living off a country of a million and a half, at harvest time, three times running, should have produced a metabolic catastrophe on the scale of the 1640s and 1650s — when the wars of that mid-century are reckoned to have killed a large fraction of the Irish population, most of it not by the sword but by the famine and plague that followed the destruction of the agricultural economy.

What happened. It did not. The specialist judgement is explicit and it should be quoted in substance rather than softened: the Jacobite-Williamite war of 1689–91 caused no recurrence of massive famine and population loss. And the reasons given are

precise. The armies were *bigger* — twenty to thirty thousand, against fewer than ten thousand in the 1640s — but they were **better supplied and less destructive of the civilian economy**. And the war was much shorter, so there was less prolonged disruption of harvests and seizure of livestock.

That is a genuinely counter-intuitive result and it produces this module's principal contribution.

The metabolic cost of a war is not proportional to the size of the armies. It is inversely proportional to the quality of their supply. A small army without a commissariat eats the country it stands in, because it has no alternative: it takes the cattle, the seed corn and the mill, and what it takes is the following year's food. A large army with magazines, transport, contractors and money *buys* its food, or brings it, and the civilian economy survives the passage.

And this study knows exactly where that supply came from. The English state of 1689–91 could pay contractors, ship victuals, and fund a commissariat because it had discovered how to borrow against future taxation — the machinery described in the extraction module, being built in precisely these years.

So the uncomfortable conclusion, which this study will state plainly and not soften in either direction: **the financial revolution reduced the metabolic bill of the conquest of Ireland.** The funded debt that bound the settlement's creditors also fed its soldiers, and a fed soldier does not burn a mill. The people of Ireland lost their land, their clergy, their schools, their arms and their parliament between 1689 and 1704; a great many fewer of them starved than had starved forty years earlier, and the reason is a subscription list in London.

Nothing about that makes the conquest better. It makes the accounting different, and the accounting is what this module is for.

Stated for the card: where a study assesses the metabolic column of a war, it should measure the invader's logistics before it measures his intentions. Deliberate starvation as a weapon is one mechanism and it produces the worst outcomes; but the ordinary mechanism is an unpaid army foraging, and it is defeated by a commissariat rather than by mercy. Expect the metabolic bill to fall as a state's fiscal capacity rises, independently of anything the state feels about the population in question.

The kingdom nobody invaded

And now the fact this module is named for.

The catastrophe of these years did not happen in Ireland, which was invaded, besieged, confiscated and dispossessed. It happened in Scotland, which was not invaded at all after 1690.

Between 1695 and 1699 the harvest failed in Scotland in 1695, 1696, 1698 and 1699. The 1690s were, on tree-ring evidence, the coldest decade in Scotland for seven hundred and fifty years, and the same failure ran across northern Europe — Finland lost perhaps a third of its people in two years. In Scotland the estimates for famine mortality run from five to fifteen per cent of a population of about 1.2 million, with death rates in Aberdeenshire perhaps reaching a quarter. That is somewhere between sixty thousand and a hundred and eighty thousand dead, and the range is not narrowing.

Around fifty thousand Scots crossed to Ulster, where they made the Presbyterian population an absolute majority — a demographic fact with consequences that are still being worked out. Others went to England, Europe and the colonies. The Old Scottish Poor Law, parish-funded and locally administered, was overwhelmed.

Now the honest question, and the module turns on getting it right. Is that the settlement's metabolic debt, or is it weather?

It is very largely weather. The framework's metabolic column exists to capture the cost of *coordination destroyed by the founding violence*, and no army destroyed Scottish agriculture in the 1690s. The cold did. A study that files a hundred thousand dead Scots under the Revolution's account is doing propaganda rather than accounting, and this collection does not do that.

But the settlement is not absent from the column either, and the mechanism by which it enters is not agriculture. It is trade.

Scotland was at war with France from 1689 because its king was, and the Nine Years' War cut its commerce with the Baltic and with France — its two principal markets. A country whose exports collapse cannot buy grain when its own harvest fails, and that is precisely the condition under which a bad harvest becomes a famine. The specialist accounts put the economic slump caused by the war alongside the failed harvests as joint causes, not the weather alone.

And then, in the middle of it, the Company of Scotland raised somewhere between a very large fraction and nearly half of the nation's available capital — figures of £150,000 and £400,000 both appear, and the discrepancy is unresolved — for the settlement at Darien, and lost effectively all of it by 1700, with a thousand of three thousand colonists surviving, in a venture that English commercial and diplomatic pressure helped to strand.

So the Scottish column reads: a climatic disaster the settlement did not cause, arriving in a kingdom whose ability to buy its way out had been reduced by a war it entered because of the settlement and by a colonial failure the settlement's other kingdom had helped to produce.

Stated for the card, because this is a distinction the collection needs: not every mass death inside an order's period is that order's metabolic debt. The test is whether the coordination that failed was destroyed by the founding. Where it was not, the correct entry is in a third column — **what the order did when an exogenous shock arrived** — and that column is a better measure of whose survival an arrangement valued than anything the arrangement says about itself.

On that measure the record is this. England, in the same years, was the richest state per head in Europe after the Dutch, was raising unprecedented revenue, and shared a monarch with Scotland. It had no jurisdiction in Scotland and no obligation, and it did essentially nothing. The Scottish parliament had the obligation and no money. A hundred thousand people, more or less, died of hunger in a kingdom that shared a crown with the best-funded state in Europe, and the crown was not the kind of institution through which grain moves.

That is not a crime and nobody committed it. It is a description of what a union of crowns without a union of parliaments actually was, and it is why the Scottish political nation had, by 1700, concluded that the arrangement needed repricing. The Union of 1707 is the entry at the bottom of this column.

The forgetting, and what determines it

The last part of a grim accounting is always the same question: who remembers, and why.

The companion study of the Protectorate produced a finding that this module is the second application of. **Memory tracks possession rather than atrocity.** England forgot the 1650s — a decade of military government, confiscation and the killing of a king — because the land settlement was reversed at the Restoration and there was nothing standing in an English field to contradict the forgetting. Ireland remembered, because the Cromwellian settlement was still on the ground every morning, in the shape of who held which acres.

Run it here and it holds again, and more sharply.

England forgot completely, and had the least to forget. No possession in England was disturbed by this settlement — no confiscation, no attainder of estates, nothing. The most tangible thing the Revolution did to an ordinary English household was remove the hearth-tax man from the doorway, which is a benefit and is not remembered either. Within two generations the events of 1688 had become, in English self-description, bloodless, moderate and characteristically English, and the word *Glorious* had been attached to them and stuck. The forgetting was not imposed and did not need to be. There was nothing to see.

Ireland remembered, and remembered in the form of possession, because the settlement was standing in the fields: Catholic landholding at about a seventh of the country in 1703 and falling further through the century, the penal statutes operating daily, and a landlord class whose title ran back through outlawry and attainder to the statutes of the 1690s. The commemorations that Irish Protestants adopted in the decades after the war were the twenty-third of October, for the rising of 1641, and the fourth of November, for William's birthday — a threat survived and the man who ended it. Neither is a doctrine. Both are about holding on to something.

The Highlands remembered because possession moved there too — later, and by statute rather than by war. The forfeitures, the abolition of the heritable jurisdictions in 1747, and then, within two generations, clearances carried out by the chiefs' own descendants on their own tenants for rent. A society was dismantled and the ground changed hands, and the memory attached itself to the ground.

Glencoe, and the case the finding has to handle

But Glencoe does not fit, and a finding that cannot handle its most obvious counter-example is not a finding.

About thirty people were killed at Glencoe. In an accounting that contains four thousand dead at Aughrim in an afternoon, several thousand dead inside the walls of Derry, and a hundred thousand dead of hunger in the Scottish parishes, thirty is nothing. No land changed hands over it. The MacDonalds of Glencoe were not dispossessed by the massacre and the glen was reoccupied.

And Glencoe is the single most remembered event in the entire Scottish column, by a wide margin, and has been for three centuries.

The possession rule does not explain it. Something else does, and it is visible in the documents.

In 1695 the Scottish parliament pressed for an inquiry so insistently that, in the words of a memorial among the King's own papers, it was plain that without one business would stop or the parliament would order an enquiry itself. A commission under the Great Seal of Scotland enquired. Its report vindicated the King's instructions and loaded the letters of the Master of Stair as exceeding them and proceeding from pique and animosity. On 10 July 1695 the parliament addressed the King touching the murder of the Glencoe men, asking for justice upon the murderers.

Nobody was prosecuted. Stair resigned and was afterwards made an earl.

And in 1703 the whole file — commission, proceedings, report and address — was printed in London and published, in its own words, for undeceiving those who had been imposed upon by false accounts.

So the refinement is this: memory tracks possession, or an unresolved official record.

Where the state itself has documented a crime, named it, and then failed to close it, the record substitutes for possession as the thing that keeps the memory alive. Possession works because the evidence is standing in a field where anybody can see it. An official record works for exactly the same reason: the evidence is standing in an archive where anybody can pick it up, and the state cannot deny it because the state wrote it.

This joins directly to the finding about how such an order handles dissent. The technique used at Glencoe was **absorption** — hold the inquiry, publish the finding, concede the fact in official language, punish nobody, and let the fact become old. Absorption is cheaper than denial and more durable, and its only cost is a permanent record. That cost is nil where nothing can be printed. In an England that had let pre-publication censorship lapse in 1695, the cost was unbounded, and it was collected eight years later by a Whig journalist and a nonjuror working together.

Which is why thirty dead in a glen outlived four thousand dead at Aughrim in the public memory of Britain. Aughrim was a battle, and battles are absorbed into the ordinary category of war. Glencoe was investigated by the government, called murder by a parliament, and left unpunished, in writing, permanently. An order that admits a crime and does not close it has manufactured its own memorial.

Reading the accounting against the framework

The principal contribution concerns the metabolic column, and it has two halves.

First: the metabolic cost of a war varies inversely with the invader's logistics, not with the size of his army. Ireland in 1689–91 was fought over by armies two to three times the size of those of the 1640s, and produced a small fraction of the earlier metabolic catastrophe, because the armies were supplied rather than foraging and the war was shorter. A commissariat is worth more to a civilian population than any quantity of good intentions in a commander. And in this case the commissariat was paid for by the funded debt — so the same financial machinery that bound the settlement's creditors also, incidentally and without anybody intending it, kept the Irish harvest in the ground. **Measure the invader's supply before you estimate his metabolic bill.**

Second: not every mass death inside an order's period is that order's metabolic debt. The test is whether the coordination that failed was destroyed by the founding violence. Scotland's famine of the 1690s was climatic and would have happened under any government. What belongs in the accounting is a third column — **the order's**

conduct when an exogenous shock arrived — and that column reads: a war entered on the king's account that cut the export trade Scotland needed in order to buy grain; a capital-destroying colonial venture that the other kingdom helped to strand; a parish poor law with no reserve; and a wealthy neighbouring kingdom under the same crown with no mechanism and no obligation to help. **How an order behaves toward a population it did not endanger is a better measure of whose survival it values than anything in its founding documents.**

Two findings compound.

Memory tracks possession, or an unresolved official record. The Protectorate study's rule holds again in England, Ireland and the Highlands. Glencoe is the exception that specifies the second condition: where a state documents a crime in its own instruments and then declines to punish it, the record does the work that a disputed field usually does, and the memory survives on the strength of a document anybody can print. Absorption buys silence at the price of a memorial.

And England forgot because there was nothing to see. This is worth stating as a finding rather than as an observation about English character, because the character explanation is the one the English themselves adopted. No English acre changed hands. No English family was dispossessed. Sixty or seventy men died in the campaign of 1688. The reason the Revolution is remembered in England as bloodless and moderate is that in England it *was* bloodless and moderate — and the reason it could be is that the bill was presented somewhere else, in a war of three years and twenty-five thousand soldiers' lives, and in a confiscation of a million acres, in another kingdom, from a population that had no vote in the parliament that ordered it.

A closing discipline. This module has argued that the metabolic column was smaller than expected in Ireland and that a great deal of Scottish death was not the settlement's fault. Neither point is a mitigation, and neither should be read as one. Twenty-five thousand soldiers died in Ireland; several thousand civilians died inside one city; a landholding class was destroyed by statute; and the penal apparatus that followed ran for a hundred years and was designed to make a religion unteachable and a people landless. Getting the columns right is not the same as making them lighter. It is the only way to see which mechanism produced which suffering — and, in this case, to notice that the machine which fed the invading army was the same machine that bound the men who sent it.

A note on sources. Quoted or closely followed from public-domain and documentary material: the prisoner totals after Culloden — 3,470 taken, 120 executed, 88 dead in prison, 936 transported, 222 banished, and the fate of nearly 700 unknown — derive from the Scottish History Society's *Prisoners of the '45* as reported in the

standard reference literature; the title page and contents of *The Massacre of Glenco* (London, 1703), including its statement that it was "publish'd for undeceiving those who have been impos'd upon by false Accounts", and the Address of the Parliament of Scotland to King William of 10 July 1695 touching the murder of the Glencoe men, are as cited in an earlier module; the memorial among King William's papers reporting that the Glencoe inquiry was pressed "with such unanimity that it's plain without it business would stop", and that the commission's report "loads the Master of Stair's letters as exceeding his Majesty's instructions, and proceeding from pique and animosity", is calendared in the State Papers.

Paraphrased and credited to modern scholarship or drawn from the standard reference literature: the judgement that the Jacobite-Williamite war caused no recurrence of massive famine and population loss, and the explanation that the armies, though larger, were better supplied and less destructive of the civilian economy and that the war was shorter, follows the survey of war and famine in Ireland 1580–1700 that this study consulted; the reconstruction of Newtownbutler's casualties from the regimental rolls; the campaign narrative and casualty figures of the Williamite War; the seven ill years, the tree-ring evidence for the decade's cold, the mortality range of five to fifteen per cent with Aberdeenshire perhaps at a quarter, the failure of the Old Scottish Poor Law and the migration to Ulster; the Darien venture; the Culloden narrative and its aftermath; and the Highland forfeitures, the Heritable Jurisdictions Act and the later clearances.

Contested figures are given as ranges and several are worse than contested. Deaths inside Derry are given as from about four thousand to about fifteen thousand and no point in that range is asserted. The Williamite War's military dead are given as about 10,000 Williamite and about 15,293 Jacobite on the modern reconstruction; George Story's contemporary calculation of over 100,000 lives including sickness and famine is reported here as a participant's estimate, is reached at second hand, and is almost certainly high — it is included because it is the only contemporary attempt at a whole figure. Aughrim is given at four thousand killed with four thousand missing on the standard count and above seven thousand in others. Schomberg's losses at Dundalk are described as several thousand without a figure, and should be established before compilation. Sedgemoor's casualties and the Bloody Assizes totals carry the ranges flagged in an earlier module. The Scottish famine mortality range of five to fifteen per cent rests on a population estimate of about 1.2 million which is itself a reconstruction; a figure of some 200,000 displaced appears in popular accounts and is not relied on here. Darien's losses appear at both £150,000 and £400,000 in reputable sources and the discrepancy is unresolved; the two figures may refer to different things —

subscribed capital against capital actually paid and lost — and this should be checked. The compensation for the heritable jurisdictions is given elsewhere in this study at approximately £150,000 and also needs checking. The report that Jacobite prisoners on the Thames hulks were available for viewing by paying sightseers derives from the Tilbury Fort prisoner records as summarised in a local history source, and is a single-source claim.

Two things that would embarrass the argument are flagged. First, the finding that better logistics reduced the metabolic bill rests substantially on one specialist synthesis; it is consistent with the general literature on early modern military supply, but this module has not tested it against Irish demographic data directly, and the Irish population figures for the 1680s and 1690s are themselves unreliable. Second, the argument that Scotland's famine was aggravated by the war-induced collapse of its export trade is stated in the scholarship as a joint cause with the harvest failures, but the relative weight of the two has not been established here, and a reader who wished to attribute the famine wholly to climate could do so without contradicting anything this module has proved. Every load-bearing fact in this module is to be re-verified against a primary or standard source before it is built upon.

MODULE 12

Four Shillings in the Pound

Convergence and divergence — what any ruler in this position would have done, and what was peculiar to this one; two nobilities that both constrained a king, one of which taxed itself and one of which did not; and the strongest counter-position in this collection, stated at full strength and answered

What converged

The framework's central proposition is that rulers in like positions converge on like solutions, because a position poses a problem with only a few workable answers, and men who have never heard of one another find the same ones. The test of a study is whether it can separate what the position dictated from what the particular people did.

Six things in this case were dictated by the position.

The sequence was dictated by who invited him. An outsider with an army normally lays the floor first and fits the story afterwards, because he does not need lawfulness until his grants must become inheritances. William published his justification five weeks before he sailed, in four languages, and had it circulating in English inns before a soldier landed. That is the insider's sequence, and he ran it because he was not free to run the other one: his sponsors were English landholders whose titles descended from the crown he was entering, and a conquest reopens the crown. The Additional Declaration says so in terms — those who invited him could not join in an attempt of conquest without making void their own lawful titles to their honours, estates and interests. Any prince invited in by any propertied class faces the same constraint and will produce the same document.

The transfer fiction was dictated by what could not be conceded. A living, claiming king had to be removed without a trial (which concedes that a king is justiciable), without a conquest (which reopens all title), and without a forfeiture (which concedes that a crown is held on terms). What remains is a fiction attributing the emptying to the loser's own act, constructed from his conduct, in a sentence where he is the only person who does anything. *Abdicated* was chosen because it was not a word known to the common law and therefore arrived with no consequences attached. Any body in that position reaches for a term with no domestic legal history, and defines it on the spot out of foreign jurists.

The stacked robe was dictated by the audiences being in one room. Where an apex's audiences are separated by distance he runs several robes at once and nobody compares them. Where they sit in a single chamber that must vote a single text, the same pressure lays the warrants on top of each other: providence, ancestry, ancient right and a legal fiction, all in the recognition clause of the Bill of Rights, none chosen, none disclaimed.

The debt was dictated by the need to borrow at scale. A sovereign's promise is a licence and prices accordingly; the Stop of the Exchequer in 1672 had demonstrated it to a generation of London bankers still living. To borrow, the crown had to make its own promises enforceable against itself, and the only available warrant was an institution it did not own. Every state that reached this problem reached the same answer or failed to borrow.

The suppression was dictated by what the order actually needed. England let pre-publication censorship lapse over a quarrel about the Stationers' Company, because its revenue came from the brewery and its obedience from neighbours and nothing anybody printed threatened either. Scotland, whose settlement rested on a Kirk, hanged a student of twenty for denying the Trinity in the same eighteen months. Neither is national character. Both are what an order does with an interpretive monopoly it does or does not require.

And the liberties were dictated by the expectation of losing. Protections were built for the situations the builders expected to find themselves in, and stopped exactly where that expectation stopped.

What diverged

Three things in this case were not dictated by anything and would not be found in a case selected at random.

No land moved. Every other settlement in this sequence — 1066, 1536, 1649 — manufactured its defenders by redistribution, and each defender manufactured an enemy. In England between 1688 and 1701 not one acre changed hands as a consequence of the Revolution. That is genuinely unusual and it forced the settlement to bind its coalition some other way, which is how the funded debt came to be doing constitutional work that nobody designed it for.

Three legal orders under one crown. The same man ceased to be king of two kingdoms in the same year on incompatible legal theories — abdication in England, forfeiture in Scotland — both in statute, both in force, because neither political nation read the other's legislation. That is the audience-indexed robe in a form the collection has not previously been able to document from two public Acts.

And the arrangement did not fall. Most of the orders in this collection ended, and the accounting could be closed. This one was challenged twice by armed force, absorbed the largest financial fraud in Europe to that date, and is — altered — still running.

Two nobilities

Now the comparison that this module is named for, and it is the most useful one available to the collection, because it isolates a single variable across two cases that look alike in every other respect.

The standard account of English exceptionalism says that England limited its monarch and therefore prospered, while the continental absolutisms concentrated power and therefore did not. Set beside that account the Polish-Lithuanian Commonwealth, and it collapses.

Poland had everything the Whig story treats as the cause. An elective monarchy from 1572, with every king chosen by an assembly of nobles and required to accept written conditions before his coronation. Legal equality among all nobles. A parliament with legislative supremacy over the crown. A guarantee of religious toleration among the nobility from 1573, which is a century and a half before England's. Constitutional protection against arbitrary arrest. And a veto so absolute that any single deputy could annul an entire session — a check on executive power beyond anything an Englishman ever imagined.

Poland called it Golden Liberty. The English called theirs the liberties of England. Both nobilities constrained their kings, in writing, and celebrated it.

By 1795 Poland did not exist. Its territory had gone to Russia, Prussia and Austria in three partitions. Between 1717 and 1764 something like seven of twenty-three sessions of its parliament produced legislation at all, the rest broken by veto, and a substantial share of those vetoes were bought by foreign powers who found it cheaper to purchase Polish paralysis than to conquer Poland. The Commonwealth went from the largest state in Europe to nothing in a generation.

And the variable that separates the two cases is on the tax roll.

The English landed class voted four shillings in the pound on its own estates, year after year, for twenty-five years, at a rate no Stuart would have dared propose, and paid it. That single tax supplied around a third of all the money raised for the war against Louis XIV. The class that made the Revolution taxed itself first and hardest, and then lent the state more on top, and then held the paper.

The Polish nobility paid something on the order of half a per cent to one per cent. It exempted itself, blocked the standing army it would have had to fund, and

treated the crown's fiscal weakness as the guarantee of its own liberty — which, in the short run, it was.

So the finding, and it should replace the Whig account wherever the collection meets it:

A constraint on the executive is neither necessary nor sufficient for state capacity. What determines the outcome is whether the constraining class has a stake in the state's solvency.

The English gentry had two stakes and each reinforced the other. It paid the land tax, which meant that a state which wasted money wasted the gentry's money. And it held, or its bankers held, transferable claims charged on the state's own revenues, which meant that a state that could not pay destroyed the gentry's assets. A class in that position constrains a king in order to *control* the spending, not to prevent it, and it will vote enormous sums to a government it distrusts because it is watching the accounts.

The Polish nobility had neither stake. It paid nothing, so state waste cost it nothing. It held no claims on the state, so state collapse cost it nothing. And the arithmetic of that is written in the outcome of 1795: the Commonwealth was extinguished, and the Polish magnate class kept the overwhelming majority of its estates under Russian, Prussian and Austrian rule, and went on collecting from its serfs as before. **The Polish nobility's assets did not die with the regime. That is exactly why the regime died.**

Which is the finding of the module on elite coordination, tested against its cleanest counter-case and holding. A creditor whose claim is marketable and charged on this order's revenues cannot exit and cannot be bought off, and defends. A landowner whose wealth is in acres that any conqueror will confirm has no reason to defend anything, and does not.

Set a third case beside them and the picture completes. **Brandenburg-Prussia** ran the opposite experiment: the Great Elector broke the estates rather than bargaining with them, taxed by decree, built the army first, and bought the Junkers' acquiescence with confirmed authority over their own peasants and a monopoly of the officer corps. That produced a state which fought above its weight for two centuries with none of England's protections and no representative check worth the name. It also produced a stake — the Junker's position depended on the state that guaranteed his manorial jurisdiction and commissioned his sons — which is the same variable arriving by a different road.

Three nobilities, three settlements, one variable. England's was given a stake and constrained the crown. Prussia's was given a stake and was constrained by the crown. Poland's was given no stake and destroyed the crown, and then the country, and kept its land.

Representative institutions are not the cause. They are one of the arrangements through which a propertied class can acquire an interest in the state's solvency, and they are not the only one, and they do not work without it.

The counter-position, at full strength

Now the case against everything this study has argued, and it must be put at its strongest, because it is the strongest in the collection and a weak version of it would be a cheat.

It goes like this.

You have spent twelve modules taking apart the settlement of 1689 — its fictions, its stacked warrants, its indemnities, its silences. Very well. Now look at what it produced.

Constitutional monarchy, which is to say a head of state who reigns under law and can be removed by it. Parliamentary control of taxation and of the army, so that no government can fund itself or arm itself without the consent of the governed's representatives. A judiciary that cannot be dismissed for its verdicts. The defence lawyer — the right of a person accused by the state to be told the charge, to have counsel, to call witnesses on oath, to require more than one accuser. Religious toleration, imperfect and partial, but the first statutory toleration in a major European state. A press without a licenser, from 1695, which is earlier than anywhere else of comparable size. Regular elections and the peaceful transfer of power between parties that detested each other.

And the financial system. The Bank of England, the funded debt, the market in government securities — the machinery that made it possible for a state to command enormous resources without confiscating them, and which is the direct ancestor of every modern public finance in the world. Without it there is no industrial revolution financed, no railways, no modern state at all.

This arrangement defeated Louis XIV, who was trying to make Europe a single monarchy. It survived two armed risings without a terror, without mass proscriptions, without a revolutionary tribunal. It cost England about seventy lives.

And compare it. Compare the French answer to the same problem a century later: the same king-question, resolved with a hundred times the blood, ending in a military dictator and twenty years of continental war. Compare Poland, whose nobility had all the liberties and no state, and which vanished. Compare Prussia, efficient and unfree. Compare almost any case in this collection.

Whatever the men of 1689 intended, they built the political and financial architecture that most of the world subsequently adopted, and they built it at a cost that is, by the standards of every comparable transformation, astonishingly low. You may call the

abdication a fiction. The fiction worked, and what it produced is the vocabulary in which you are conducting this criticism.

That is the case, and every clause of it is true.

The answer

The answer is not that any of it is false. It is that the goods and the costs came out of the same mechanism, and a study that reports one without the other has not analysed an arrangement — it has repeated its advertising.

First, credit what is owed, without qualification. The Treason Trials Act of 1696 is one of the most valuable statutes in the history of criminal procedure and this study has said so. Judicial tenure independent of the crown is a genuine and durable protection and it is still in force. The end of pre-publication censorship, however it came about, produced a public argument in print that has not been closed since. Parliamentary control of supply is the mechanism by which everything else was made to stick. The funded debt is one of the most consequential institutional inventions in human history. And the English column of the founding really is nearly bloodless. None of that is diminished by anything below.

Second, run the distribution, which is what the framework exists to do. Not *were these goods real* — they were — but *who received them and who paid.*

The protections went to men who could imagine standing in the dock. Counsel for the accused was granted for treason, the crime of the political nation; a labourer accused of felony got no counsel for another hundred and forty years. Habeas corpus was suspended within three weeks of the crown being accepted, three times in the first year, with members of both Houses exempted by proviso — the drafters naming the protected class in their own hand.

The toleration went to Protestant dissenters and to nobody else. Catholics were excluded by design, anti-Trinitarians by statute, and in 1700 the same parliament that had given the treason defendant his counsel put a hundred-pound bounty on a priest, made teaching a child punishable by imprisonment for life, and forbade a class of Englishmen to purchase land.

The free press was a by-product of a quarrel about the price of classical texts, and within a month the Lord Justices confirmed that seditious libel remained punishable at common law. What ended was one technology of control. The other was cheaper and it stayed.

The financial system transferred a permanent charge from the people who drank beer to the people who held stock, and the transfer is written into the title of the Bank's founding Act, which grants duties on tonnage and on beer, ale and other liquors to

secure recompenses to such persons as shall voluntarily advance. Nobody drank voluntarily.

And the bill was presented in Ireland. Twenty-five thousand soldiers dead in three years. Several thousand civilians dead inside one city. Over a million acres confiscated, Catholic landholding falling from about a fifth of the country to about a seventh. And then a body of statute — houses searchable for arms, schoolmasters criminalised, bishops banished, land purchase forbidden, and an inheritance rule designed to break a class into fragments unless the eldest son changed his religion — enacted by a parliament from which three-quarters of the population was excluded, and which ran for a century.

Third, and this is the part that matters most: those two lists are not separable.

It is tempting to say that the settlement produced great goods and also, regrettably, great harms, as though a better version could have had the first without the second. The structure does not permit that reading.

The liberties exist *because* the political nation expected to lose power and feared its own machinery. That is the mechanism: reciprocal fear, made credible by genuine alternation, producing protections drafted for the situations the drafters expected to be in.

The penal laws exist because the same men, applying the same calculation, did not expect to be Catholic.

There is one mechanism there, not two. A coalition legislating its own fears and its own interests, with nobody else in the room, will produce exactly this: superb protections against the dangers it can imagine running, and nothing whatever for the people whose dangers it cannot. The quality of the first is evidence of how sharply those men could imagine their own peril. The completeness of the second is evidence of who was absent.

The same holds for the finance. The reason the state could borrow is that it could be bound; the reason it could be bound is that a propertied class had a stake in its accounts; and the money it borrowed paid for the army that took Ireland and the fleet that fought France. The funded debt is simultaneously the ancestor of modern public finance and the instrument that made the conquest affordable. The module on the accounting found something more uncomfortable still: because the army was paid and supplied rather than foraging, the Irish civilian population came through a three-year war far better than it had come through the previous one. The commissariat that spared the harvest and the credit that bound the creditors were the same machinery.

Fourth, the concession the counter-position has earned, and it is not small.

The men of 1696 wrote *every such Person*. They did not write *every gentleman*. There was no reason for them to be specific about the beneficiary, so they were not, and two centuries later that generality did work they never intended and would probably have resisted. The same is true of the right of *the Subjects* to petition, and of a good deal else in the Bill of Rights.

That is how a body of liberty accretes rather than merely rotating among whoever is frightened this decade. A faction wins a protection out of self-interest; the draftsman writes it in universal terms because there is no reason not to; the self-interest expires and the universal words do not; and somebody the original faction never considered picks them up. This study has argued throughout that the settlement was built by a few thousand men for themselves. It should also record that they left instruments lying about which other people were later able to use, and that this is not an accident but a property of how law is written — and that on any honest accounting it counts in the settlement's favour.

And fifth, the discipline the whole collection is held to.

The order made in these years was a build. It was assembled under pressure by lawyers and landowners using fictions they chose deliberately, in a chamber where the alternatives were canvassed and rejected, and the record of them choosing is on the page. And it became real. It is the constitution the United Kingdom is still governed under. It is the ancestor of most of the world's public finance. It is the vocabulary in which most of humanity now argues about government, including everybody who argues against it.

Naming a built origin is not debunking it. A built thing that became real is more durable than any lie, because a lie must be maintained and a naturalised order need not. The men who believed in the English constitution in 1750 or 1850 were not dupes reciting a script; they believed something that had been made, and had become true, and did real work.

But two disciplines follow from that and neither may be dropped.

The date of the construction should not be backdated. Nothing of the Revolution entered English formation in the 1690s — the catechism was not altered by a word, and the parish went on requiring every child to honour and obey the King and all that are put in authority under him, and to do his duty in that state of life to which it should please God to call him. The Glorious Revolution as an item of English self-understanding was assembled later, by people with a completed fact to explain, and driven into children through nineteenth-century schoolrooms. The Twelfth of July was built by an Order founded in 1795, a century after the battles it commemorates.

The founders installed almost nothing. Their descendants installed a great deal and dated it back.

And the distribution should not be forgotten because the winners wrote the account. *Glorious Revolution* is a phrase from the settlement's own robe. *Bloodless* is a description of England that was made to stand for an operation that killed tens of thousands in another kingdom. This study has quoted both and used neither, and that is not fastidiousness. It is the difference between reading an order and joining it.

Reading convergence and divergence against the framework

The principal contribution is the variable that separates the two nobilities.

A constraint on the executive is neither necessary nor sufficient for state capacity. The operative variable is whether the constraining class holds a stake in the state's solvency.

Three cases, one variable:

England. A landed class that taxed itself at four shillings in the pound and held, directly or through its bankers, transferable claims charged on the state's revenues. It constrained the crown in order to control the spending, and voted enormous sums to governments it distrusted, and got a fiscal-military state that outlasted every rival.

Poland. A noble class with an elective monarchy, a legislative veto, constitutional protection against arbitrary arrest, and religious toleration among itself a century and a half before England's — which paid on the order of half a per cent to one per cent, blocked the army it would have had to fund, and treated the crown's poverty as the guarantee of its liberty. Its parliament failed to legislate in most of its sessions and its vetoes were bought by the neighbours who eventually partitioned it. And when the state was extinguished the class kept its estates, which is precisely why it had never had reason to save the state.

Brandenburg-Prussia. A crown that broke the estates rather than bargaining with them, taxed by decree, and bought the nobility's acquiescence with authority over its own peasants and a monopoly of the officer corps — manufacturing the same stake by the opposite route, and producing capacity without protections.

Where a study finds a constrained monarchy, it should therefore not stop at the constraint. It should go to the tax roll and to the register of the public debt and ask what the constraining class is *in* for. A class that pays and lends will build a state. A class that neither pays nor lends will hollow one out and survive its death, and will call the process liberty while it happens.

Three findings compound.

Position dictated the sequence, the fiction, the stack and the debt. An invited outsider must publish before he lands and disclaim conquest in property terms; a body

removing a living claimant without a trial or a conquest must attribute the emptying to his own act and will choose a word with no domestic legal history; a coalition voting one text will stack its warrants rather than choose among them; and a state that wishes to borrow must make its promises enforceable against itself through an institution it does not own. None of these required an Englishman.

The absence of a land settlement forced a substitute, and the substitute was better. Because nothing was redistributed in England, the arrangement had to bind its coalition some other way, and the instrument that emerged — a marketable claim charged on the order's own revenues — has a property no land settlement has: it can be manufactured without dispossessing anybody, so it makes defenders without making enemies. That is a general result, and it is why the funded debt spread to every state that could adopt it.

And the same mechanism produced the liberties and the disabilities. Reciprocal fear under credible alternation is a single process. It generated the finest criminal-procedure statute of its century and a bounty on a priest, four years apart, from one chamber. A study that reports only the first has been reading the advertising; a study that reports only the second has failed to explain why the settlement is still standing.

The close

The order made between 1685 and 1701 was founded by a foreign army invited by seven men who signed in cipher, legitimated by a word that was not known to the English law, settled without moving an acre in the kingdom that mattered, and bound together by a debt that nobody designed for the purpose. It gave the men who made it the best protections against the state that had ever been written down, and gave the majority of the people it governed nothing at all except the removal of a tax collector from their doorway — which, it turns out, was enough, because it never needed them.

It was cheap in England because it asked England for nothing. It was expensive in Ireland because it took everything there was to take. And it endured, not because anybody believed in it — the parish catechism went on teaching the doctrine it had violated for another century and a half — but because several thousand men held titles and stock that would not survive its replacement, and because a chartered company in Threadneedle Street, on a December afternoon in 1745 with a Jacobite army at Derby, could not sell, could not flee, and paid out in sixpences until the news improved.

That is what it was. What it became is something else, and the something else is real, and is still running, and includes a great deal that its founders would not have recognised and some things they would have prosecuted.

The arithmetic is on the page. The sum is the reader's.

A note on sources. This module quotes no primary material that has not been quoted and sourced in an earlier module of this study; its function is comparative and its evidence for the case itself is drawn from Modules 1 to 11, whose notes on sources govern. The Additional Declaration of 24 October 1688 at "to make void their own lawful Titles to their Honours, Estates, and Interests", the Bill of Rights, the Treason Trials Act 1696 at "every such Person soe accused and indicted", the Popery Act 1698, the long title of the Bank of England Act 1694, and the 1662 Catechism are all quoted and attributed above in their own modules.

The comparative material is drawn from other studies in the *Patterns of Power* collection and from the standard reference literature. The account of the Polish-Lithuanian Commonwealth — the elective monarchy from 1572, the pacta conventa, legal noble equality, the liberum veto, the Warsaw Confederation's toleration of 1573 restricted to the nobility, the failure of most parliamentary sessions between 1717 and 1764, the purchase of vetoes by foreign powers, noble tax rates on the order of half a per cent to one per cent, extraction rates from the peasantry rising through the period, and the preservation of the great majority of magnate estates after the partitions — follows the collection's Poland studies and should be checked against them and against the specialist literature before compilation; the numerical claims in particular are that study's and are not independently verified here. The account of Brandenburg-Prussia — the Great Elector's treatment of the estates, taxation by decree, the Junkers' manorial authority and monopoly of the officer corps — follows the collection's Brandenburg-Prussia study.

Contested and uncertain points are flagged. The four-shillings-in-the-pound comparison is the sharpest device in this module and it is not a like-for-like measurement: the English land tax was assessed on annual value at rates that varied by year and were frequently below four shillings in peacetime, and the Polish figure is a different kind of estimate drawn from a different accounting tradition. The comparison is offered as an order-of-magnitude contrast between a class that taxed itself substantially and one that exempted itself almost entirely, which is not in dispute; the specific rates should not be set against each other as though they were commensurable. The claim that the Polish nobility's exemption caused the partitions is a structural argument and a strong one, and it is not the only reading available: geography, the absence of natural frontiers, the scale and appetite of three neighbouring powers, and the Commonwealth's multi-ethnic composition all appear in the specialist explanations and are not weighed here. The characterisation of Prussian capacity as arising from a manufactured Junker stake follows the collection's own study and is a structural reading rather than an established consensus.

Finally, the counter-position stated above is this study's construction of the strongest case against its own argument, not a quotation from any particular historian. Readers who wish the Whig account in its own words should go to Macaulay; readers who wish the strongest modern statements of the Revolution's significance should go to Pincus for its revolutionary character, to Israel and the Dutch historians for the invasion that the English account minimises, and to Harris for the insistence that this cannot be written as an English event at all. This study has named that disagreement throughout rather than picking a side, and has built only on what the disputing accounts converge on. Every load-bearing fact in this module is to be re-verified against a primary or standard source before it is built upon.